THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM THE PUBLIC SERVICE COMMISSION

Public Service Commission Docket No. 2018-318-E

Duke Energy Progress, LLC, Appellant-Respondent,

v.

Office of Regulatory Staff, Nucor Steel-South Carolina, Cypress Creek Renewables, LLC, SC Department of Consumer Affairs, Sierra Club, South Carolina Coastal Conservation League, South Carolina Energy Users Committee, South Carolina Solar Business Alliance, Incorporated, The South Carolina State Conference of the National Association for the Advancement of Colored People, Upstate Forever, Vote Solar, and Walmart, Inc., Respondents,

Of whom Office of Regulatory Staff is Respondent-Appellant.

NOTICE OF APPEAL

The South Carolina Office of Regulatory Staff ("ORS") cross-appeals the Decisions and Orders of the Public Service Commission dated May 21, 2019 (Order No. 2019-341), dated July 31, 2019 (Order No. 2019-545), and the order on motions for rehearing and reconsideration dated October 18, 2019 (Order No. 2019-454). Copies of these orders are attached to this notice. ORS received Duke Energy Progress, LLC's Notice of Appeal of the above-referenced orders on November 15, 2019.

Because the orders set a public utility rate under Title 58 of the South Carolina Code, this appeal is filed in the South Carolina Supreme Court, pursuant to Rule 203(d)(2), SCACR.

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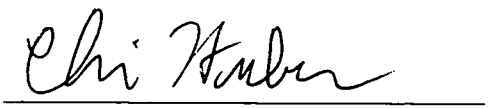
Respectfully Submitted,



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BEFORE

THE PUBLIC SERVICE COMMISSION

OF SOUTH CAROLINA

DOCKET NO. 2018-318-E – ORDER NO. 2019-341

MAY 21, 2019

IN RE:	Application of Duke Energy Progress, LLC for Adjustments in Electric Rate Schedules and Tariffs	)))	**ORDER**

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I. EXECUTIVE SUMMARY

In the interest of transparency, and to provide a condensed explanation of our reasoning with respect to certain significant components of this Order, we offer the following Executive Summary of issues that have the greatest dollar impact on customer rates and that have otherwise attracted significant public interest.

Return on Equity

The substantial evidence on the whole record supports, and we are persuaded that a 9.50 percent return on equity ("ROE") is just and reasonable in this proceeding. We conclude that Office of Regulatory Staff ("ORS") witness David Parcell presented sound analysis as to the appropriate ROE, a recommended range of 9.1 – 9.5. The evidence in this proceeding shows that Duke Energy Progress, LLC ("DEP") witness Robert Hevert's ROE analyses relied on inputs that systematically elevated his estimated ROE. This finding is supported by evidence and testimony from the hearings regarding ROEs approved in neighboring jurisdictions for utilities with similar risk profiles; downward national ROE trends; and DEP's very strong credit ratings and financial soundness. Unless clearly justified, which in this case it was not, DEP's South Carolina customers should not pay rates incorporating a ROE that exceeds the national average for vertically integrated utilities.

Coal Ash Expenses

We conclude that coal ash-related costs incurred solely as a result of North Carolina's Coal Ash Management Act ("CAMA") law shall not be recoverable from DEP's South Carolina customers at this time. However, should our General Assembly or the federal government enact laws that impose costs currently only imposed by North Carolina's CAMA, DEP is not prohibited from seeking recovery of such costs which, at present, we disallow.

Proposed Differentials in Energy Demand

The Company's proposed rate design changes are most fully and rationally considered only once the customer usage data enabled by Advanced Metering Infrastructure ("AMI") has been collected and analyzed. We decline to adopt the Company's proposal at this time.

Non-Allowable Expenses

On April 15, 2019, during the hearing, counsel for DEP notified the Commission that the Company and the ORS had come to an agreement regarding the recovery of certain expenses the ORS had deemed non-allowable (the "Non-allowables Stipulation") and that the Company and ORS further agreed that it is appropriate to resolve some of the conceptual issues around non-allowables in a separate administrative docket to provide clarity going forward.

Furthermore, a multitude of Commission orders address the treatment of non-allowable expenses, and for purposes of this proceeding, we find underlying rationales of these decisions apply to the circumstances of the present case. We direct that an administrative docket on non-allowables shall be established subsequent to the issuance of this Order to ensure clarity for future proceedings.

Bonuses and Incentive Compensation

We adopt a 75% disallowance of the South Carolina allocation of Duke Energy CEO Lynn Good's compensation, and a 50% disallowance of compensation of the next three highest-paid executives. This division fairly shares the burden and benefits of executive incentive compensation between the shareholders and the ratepayers. Regardless of the division of recovery for such incentive compensation, we do not instruct DEP on how to structure its incentive compensation packages.

Deferred Costs

The Company has deferred costs relating to GridSouth, Fukushima and cybersecurity, and Harris COLA that it seeks to recover in this proceeding. The Commission concludes that the Company is entitled to a "return of" the deferred costs which it seeks to recover, but only a "return on" capital-related expenses. This conclusion is consistent with the principal of using a historic Test Year, established principles of regulatory accounting regarding the treatment of capital versus operating expenses, and the fact that customers did not receive notice of the possible impact of deferrals. An administrative docket on the creation and treatment of deferrals shall be established subsequent to the issuance of this Order.

II. INTRODUCTION

This matter comes before the Public Service Commission of South Carolina (the "Commission" or "PSC") on the Application of Duke Energy Progress, LLC ("DEP" or the "Company") filed November 8, 2018 (the "Application") requesting authority to adjust and increase its electric rates, charges, and tariffs. The Application was filed pursuant to S.C. Code Ann. §§ 58-27-820 and 58-27-870 and S.C. Code Ann. Regs. 103-303 and 103-823.

Contemporaneous with its Application, on November 8, 2018, the Company filed the Direct Testimony of Laura D. Bateman, Director of Rates and Regulatory Planning for Duke Energy Carolinas, LLC ("DEC") testifying on behalf of DEP; David L. Doss Jr., Director of Electric Utilities and Infrastructure Accounting for Duke Energy Business Services ("DEBS");[1] Kodwo Ghartey-Tagoe, State President – South Carolina for DEP and DEC; Janice Hager, President of Janice Hager Consulting, LLC; Kelvin Henderson, Senior Vice President of Nuclear Operations;

[1] DEBS provides various administrative and other services to DEP and other affiliated companies of Duke Energy.

Robert B. Hevert, Partner at ScottMadden, Inc.; Retha Hunsicker, Vice President, Customer Connect-Solutions for DEBS; Jon F. Kerin, Vice President, Coal Combustion Products ("CCP") Operations, Maintenance and Governance for DEBS; Joseph A. Miller, Jr., Vice President of Central Services for DEBS; Jay W. Oliver, General Manager, Grid Solutions Engineering and Technology for DEBS; John Panizza, Director, Tax Operations for DEBS; Donald Schneider, Jr., General Manager, AMI Program Management for DEBS; John L. Sullivan, III, Director, Corporate Finance and Assistant Treasurer for DEBS and Assistant Treasurer of DEP; Kendra A. Ward, Rates and Regulatory Strategy Manager for DEP and DEC; Steven B. Wheeler, Pricing and Regulatory Solutions Director for DEBS; and Dr. Julius A. Wright, Managing Partner, J.A. Wright & Associates, LLC. Exhibits were included with the direct testimony of witnesses Bateman, Doss, Hevert, Hunsicker, Kerin, Oliver, Ward, Wheeler, and Wright. The Company filed Supplemental Direct Testimony and Exhibits for Company witness Bateman on January 18, 2019 and January 22, 2019, and errata sheets to the Direct Testimony of Company witnesses Hunsicker, Kerin, and Ward. On February 11, 2019, the Company filed an errata sheet to the Direct Testimony of Company witness Wright. On February 27, 2019, the Commission granted DEP's request for Julie K. Turner, Vice President of Carolinas Natural Gas Generation for DEP, to adopt the pre-filed Direct Testimony of Joseph A. Miller Jr.[2]

The Company's general electric rates and charges were last approved by the Commission in Docket No. 2016-227-E, Order No. 2016-871, dated December 21, 2016. The rates approved in this Docket were phased in during 2017 and 2018.

[2] See Order No. 2019-153.

In its Application, the Company requested a revenue increase of approximately $69 million with approximately a $10 million offset to be implemented with a rate rider[3] and a ROE of 10.50 percent.

On November 26, 2018, the Commission Clerk's Office issued the Notice of Filing and Hearing and instructed the Company to publish it in newspapers of general circulation in the areas affected by the Company's Application by December 6, 2018, to notify each affected customer of the hearing by December 6, 2018, and to provide a certification to the Commission by December 27, 2018. On November 27, 2018, the Company filed a letter requesting additional time to complete the notification to customers. On November 28, 2018, the Commission's Clerk's Office issued a Revised Notice of Filing and Hearing and instructed the Company to publish it in newspapers of general circulation in the areas affected by the Company's Application by December 6, 2018, and to provide proof of publication by December 27, 2018. The Revised Notice of Filing and Hearing indicated the revenue being requested by the Company, the overall bill impact to residential customers if the Company's request was granted and referenced the Company's Application. The Revised Notice of Filing and Hearing also advised those desiring to participate in the proceeding, scheduled to begin April 11, 2019, of the manner and time in which to file appropriate pleadings. The Commission also required the Company to notify each affected customer of the hearing by January 11, 2019 and provide a certification to the Commission by February 1, 2019. On December 27, 2018, the Company filed affidavits with the Commission demonstrating that the Revised Notice was duly published in accordance with the

[3] The net annual revenue increase includes the impact of the return of deferred income taxes through the excess deferred income tax rider ("EDIT Rider") of approximately $9,977,484, as further discussed below.

Clerk's Office's instructions. On January 31, 2019, the Company filed an affidavit certifying that the Revised Notice of Filing and Hearing had been furnished to all applicable customers of DEP.

Pursuant to Commission Order No. 2019-120, the Clerk's Office scheduled public hearings in Florence and Sumter Counties. On February 20, 2019, the Commission's Clerk's Office instructed the Company to notify each affected customer of the Public Night Hearings by March 1, 2019. The Company requested that, in lieu of mailing customers Notice of the Public Night Hearings, it be permitted to provide notice of the hearings using the Company's automated calling system to place calls to customers by March 1, 2019, informing them of the dates, times, and locations of the two public hearings. On February 21, 2019, pursuant to Commission Order No. 2019-19-H, Standing Hearing Officer Randall Dong granted the Company's request for approval of alternative notice of public night hearings.

Walmart, Inc. ("Walmart"), represented by Stephanie U. Eaton, Esquire; Carrie Harris Grundmann, Esquire; and Derrick Price Williamson, Esquire, filed a petition to intervene on November 27, 2018. Nucor Steel – South Carolina ("Nucor"), represented by Robert R. Smith II, Esquire, Garrett A. Stone, Esquire, and Michael K. Lavanga, Esquire, filed a petition to intervene on December 17, 2018.

Vote Solar, represented by Bess J. Durant, Esquire and Thadeus B. Culley, Esquire, filed a petition to intervene on December 27, 2018. The South Carolina Solar Business Alliance ("SBA") represented by Richard L. Whitt, Esquire, filed a petition to intervene on January 2, 2019. Cypress Creek Renewables ("Cypress"), represented by Richard L. Whitt, Esquire, filed a petition to intervene on January 18, 2019. The South Carolina Energy Users Committee

("SCEUC") represented by Scott Elliott, Esquire, filed a petition to intervene on January 28, 2019. Sierra Club, represented by Robert Guild, Esquire and Bridget Lee, Esquire, filed a petition to intervene on January 28, 2019. The South Carolina State Conference of the National Association for the Advancement of Colored People ("NAACP"), South Carolina Coastal Conservation League ("CCL"), and Upstate Forever (collectively, "SC NAACP, et al."), represented by Stinson Woodward Ferguson, Esquire; David L. Neal, Esquire; and Gudrun E. Thompson, Esquire, filed a petition to intervene on February 1, 2019. The Office of Regulatory Staff ("ORS"), automatically a party pursuant to S.C. Code Ann. § 58-4-10(B), was represented by Nanette S. Edwards, Esquire, Andrew M. Bateman, Esquire, and Alexander W. Knowles, Esquire. DEP was represented by Heather Shirley Smith, Esquire; John T. Burnett, Esquire; Camal O. Robinson, Esquire; Frank R. Ellerbe, III, Esquire; Brandon F. Marzo, Esquire; Molly McIntosh Jagannathan, Esquire; and Len S. Anthony, Esquire. Collectively, DEP, Walmart, Vote Solar, SBA, SCEUC, Cypress, Sierra Club, SC NAACP, et al, and ORS are referred to as the "Parties" or individually as a "Party."[4]

On March 1, 2019 SBA filed the Direct Testimony and Exhibits of Hamilton Davis, Director of Regulatory Affairs for Southern Current, LLC, and Christopher Villarreal, President of Plugged In Strategies.

On March 4, 2019, ORS filed the Direct Testimony of Sarah W. Johnson, Deputy Director of Utility Services for ORS; Kelvin L. Major, Audit Manager for ORS; Willie J. Morgan, P.E., Deputy Director of the Utility Rates Department for ORS; David C. Parcell, Principal and

[4] The South Carolina Department of Consumer Affairs ("Consumer Affairs"), represented by Becky Dover, Esquire and Carri Grube-Lybarker, Esquire, was provided notice pursuant S.C. Code Ann. § 37-6-604(C), but did not elect to participate.

Senior Economist of Technical Associates, Inc.; Zachary J. Payne, Senior Auditor in the Audit Department for ORS; Anthony Sandonato, Regulatory Analyst in the Utility Rates and Services Division for ORS; Matthew P. Schellinger II, Regulatory Analyst in the Utility Rates and Services Division for ORS; Michael L. Seaman-Huynh, Senior Regulatory Manager in the Utility Rates and Services Division for ORS; and Dan J. Wittliff, P.E., BCEE, Managing Director of Environmental Services for GDS Associates, Inc. Exhibits were included with the Direct Testimony of witnesses Major, Morgan, Parcell, Seaman-Huynh, and Wittliff.

Also, on March 4, 2019, the Sierra Club filed the Direct Testimony and Exhibits of Ezra D. Hausman, Ph.D., an independent consultant doing business as Ezra Hausman Consulting. Nucor filed the Direct Testimony of Billie S. LaConte, Energy Advisor and Associate Consultant at J. Pollock, Incorporated; Jeffrey Pollock, Energy Advisor and President of J. Pollock, Incorporated; and Dr. Jay Zarnikau, Vice President of Frontier Energy. Exhibits were included with the Direct Testimony of witnesses Laconte and Pollock. Walmart filed the Direct Testimony and Exhibits of Steve W. Chriss, Director of Energy Services. SCEUC filed the Direct testimony and Exhibits of Kevin W. O'Donnell, President of Nova Energy Consultants, Inc. Vote Solar filed the Direct Testimony and Exhibits of Justin R. Barnes, Director of Research with EQ Research, LLC. SC NAACP, et al. filed the Direct Testimony and Exhibits of John Howat, Senior Policy Analyst at the National Consumer Law Center, and Jonathan Wallach, Vice President of Resource Insight, Inc.

On March 8, 2019, the ORS moved to establish a new and separate hearing docket to review and consider the Company's proposed Grid Improvement Plan ("GIP"). SBA and

Cypress filed letters in support of ORS's motion.[5] On March 14, 2019, ORS and DEP filed a Stipulation ("GIP Stipulation") agreeing that the GIP shall be considered in a separate docket independent from the Application. The Company agreed to withdraw from Commission consideration the GIP and the associated cost recovery proposal for costs incurred related to plant placed in service on or after January 1, 2019. Pursuant to the GIP Stipulation, all testimony and evidence relating to the GIP may be moved to the new docket, and all Parties who have expressed any position on the GIP shall automatically be granted intervenor status in the new docket. ORS and the Company further agreed that DEP may defer into a regulatory asset account all GIP-related costs until the underlying costs and proposed recovery are considered in a general rate case proceeding. On March 13, 2019, the Standing Hearing Officer approved the GIP Stipulation pursuant to Order No. 2019-26H.

On March 18, 2019, the Company filed the Rebuttal Testimony of witnesses Bateman, Ghartey-Tagoe, Hager, Henderson, Hevert, Hunsicker, Kerin, Panizza, Schneider, Turner, Sullivan, Wheeler, and Wright. The Company also filed the Rebuttal Testimony of Barbara A. Coppola, Manager, Grid Solutions and Strategy with DEBS; Renee Metzler, Managing Director – Retirement and Health and Welfare with DEBS; Lesley Quick, Vice President, Revenue Services for Duke Energy Corporation ("Duke Energy"); and John J. Spanos, President of Gannett Fleming Valuation and Rate Consultants, LLC. Exhibits were included with the Rebuttal Testimony of witnesses Bateman, Hevert, and Sullivan.

[5] Vote Solar, Nucor, SCEUC, SC NAACP, et al., and Walmart voiced their support for ORS's motion via E-mail, which was posted to the Docket Management System on March 11, 2019.

On March 25, 2019, ORS filed the Surrebuttal Testimony of witnesses Johnson, Major, Morgan, Parcell, Payne, Seaman-Huynh, and Wittliff. ORS also filed Surrebuttal Testimony of Steven W. Hamm, Special Counsel and Senior Advisor for ORS; and Dr. John C. Ruoff, Principal and Owner of The Ruoff Group. Exhibits were included with the Surrebuttal Testimony of Major, Seaman-Huynh, Parcell, Wittliff, Ruoff, and Hamm.

Also, on March 25, 2019, the Sierra Club filed the Surrebuttal Testimony of witness Hausman; SC NAACP, et al. filed the Surrebuttal Testimony and Exhibits of witness Howat and Surrebuttal Testimony of witness Wallach; Vote Solar filed the Surrebuttal Testimony of witness Barnes; and SCEUC filed the Surrebuttal Testimony of witness O'Donnell.

On March 26, 2019, the Company filed a letter[6] stating it did not contest the BFC as proposed by ORS, and enumerated those charges as $11.78 for residential customers, $12.34 for small general service ("SGS") customers, and $11.31 for SGS Constant Load customers. ORS responded by letter[7] clarifying ORS witness Seaman-Huynh's Surrebuttal Testimony sponsors a rate design methodology that when applied to the adjustments proposed by ORS results in the rates outlined by DEP in its March 26, 2019, letter but if applied to different adjustments would yield different rates.

Public hearings were held on April 1, 2019 in Florence and on April 2, 2019 in Sumter. Hundreds of customers attended these hearings and spoke to the Commission about their concerns

[6]See Notification Letter Regarding the Proposed Basic Facilities Charge Proposed by the Office of Regulatory Staff https://dms.psc.sc.gov/Attachments/Matter/8a747521-b274-4f2c-a066-8e0e246e0e02

[7]See Clarification Letter Regarding Base Facilities Charge https://dms.psc.sc.gov/Attachments/Matter/0ebc9872-ae0b-42ab-bf37-7bbe9dcdfff0

regarding the Company's proposal. This Commission heard from about 45 customers who testified about the impacts of DEP's requests in its Application.

On March 29, 2019, DEP filed a Stipulation[8] between the Company and Nucor ("Nucor Stipulation,") along with the Stipulation Testimony of DEP witness Wheeler. Under the terms of the Nucor Stipulation, Nucor withdrew the Direct Testimony of its witnesses and DEP withdrew its Rebuttal Testimony and refiled[9] after removing all references to Nucor's issues. DEP also filed the Second Supplemental Testimony of witness Bateman on April 1, 2019, in support of the Nucor Stipulation.

On April 8, 2019, ORS and DEP reached an agreement regarding DEP's proposed Prepaid Advantage Program Pilot ("Prepaid Pilot") and filed a Stipulation ("Prepaid Pilot Stipulation"). [10] Pursuant to the Prepaid Pilot Stipulation, DEP withdrew its request for consideration of the Prepaid Pilot in this Docket, with the option to open a separate docket in the future and transfer all testimony and exhibits from this Docket.

On April 10, 2019, Hearing Officer Dong excused SBA witnesses Villareal and Davis. Pursuant to the GIP Stipulation, the testimony of witnesses Villareal and Davis will be moved into the appropriate new docket once created. Counsel for SBA was also excused from appearing at the hearing in this Docket.

Also, on April 10, 2019, ORS filed a stipulation between it and DEP whereby DEP agreed to withdraw from Commission consideration its proposed Pre-Paid Advantage Pilot Program.

[8]See Duke Energy Progress, LLC and Nucor Steel – South Carolina Stipulation https://dms.psc.sc.gov/Attachments/Matter/b950f8d4-b530-48a9-8e8b-e37dea8e3cc5

[9]DEP filed the redlined and clean versions of the Rebuttal Testimony of witnesses Bateman, Gartey-Tagoe, Henderson, Hevert, and Sullivan.

[10]See Stipulation https://dms.psc.sc.gov/Attachments/Matter/b5733e73-44fa-41bc-ab80-d7762186b543

According to the Stipulation, a new docket for the Pre-Paid Advantage Pilot Program will be established at which time the Commission will consider that program.

The Commission conducted an evidentiary hearing on this matter from April 11, 2019 through April 17, 2019 in the hearing room of the Commission with the Honorable Comer H. Randall presiding.

The following witnesses appeared, gave summaries of their testimonies, and answered questions from counsel and the Commission: SC NAACP, et al. witness Wallach; DEP witnesses Bateman, Coppola, Ghartey-Tagoe, Hager, Henderson, Hevert, Hunsicker, Kerin, Metzler, Panizza, Quick, Sullivan, Schneider, Turner, Wheeler, and Wright; ORS witnesses Parcell, Wittliff, Major, Payne, Seaman-Huynh, Ruoff, Hamm, and Morgan; and SCEUC witness O'Donnell.

Upon the agreement of all parties, SC NAACP, et al. witness Wallach testified out of turn on April 11, 2019, regarding DEP's proposed increase to the BFCs and the negative impact the increase would have on DEP's customers.

DEP witnesses Bateman and Ghartey-Tagoe testified as the Company's first panel of witnesses. Witness Bateman explained the Company's pro-forma accounting adjustments and revenue requirements for the test period. Witness Bateman also testified that DEP does not have a storm damage reserve fund. Witness Ghartey-Tagoe provided an overview of the reasons for the Company's request for an increase in electric rates and charges. Witnesses Schneider, Quick, and Hunsicker testified as DEP's next panel. Witness Schneider discussed the Company's implementation of AMI technology, including deployment timelines and the resulting benefits for customers. Witness Quick explained DEP's request for a transaction fee-free payment program for credit, debit, and Automated Clearing House ("ACH") payment methods for residential

customers. Witness Hunsicker discussed the need for modernization of DEP's current Customer Information System ("CIS") into Customer Connect. Witness Hunsicker also responded to ORS witness Payne's recommendation to disallow the projected two-year average operation and maintenance ("O&M") expense.

The Commission reconvened on April 12, 2019, with the conclusion of DEP's panel of witnesses Schneider, Quick, and Hunsicker. The Company then presented witness Panizza who addressed the Tax Cuts and Jobs Act ("TCJA") and its impact on DEP's customers. Witnesses Turner and Henderson testified as the next panel for DEP. Witness Turner described the Company's fossil, hydroelectricity, and solar generation assets, provided updates on the Company's capital additions, and explained the key drivers impacting O&M costs. Witness Turner also responded to Sierra Club witness Hausman regarding the recovery of costs for the dry bottom ash system. Witness Henderson described DEP's nuclear generation assets, DEP's capital additions since its last rate case and upcoming capital additions and provided operational performance results. Witness Henderson responded to ORS witness Morgan's recommendations to remove the Company's request to adjust depreciation and amortization expenses to establish a reserve for end of life nuclear costs and to exclude nuclear inventory from rate base. Upon agreement by the Parties, DEP stipulated into the record the testimonies of witnesses Doss, Ward, and Oliver. Witness Metzler testified next in response to ORS witness Major's recommendations to remove 50 percent of the Company's long and short-term incentive program costs. DEP presented its next panel of Witnesses Hager and Wheeler. Witness Hager testified to the allocation of DEP's operating revenues and expenses and the Company's cost of service study ("COSS"). Witness Wheeler explained DEP's proposed rates and charges and the impacts on customers, and responded to intervenor testimony regarding BFCs, rate design, real time pricing, and the refund

of Excess Deferred Income Tax ("EDIT"). Witness Wheeler also testified the Nucor Stipulation resolves all issues raised by Nucor and agrees to increase rates for all large general service ("LGS") class schedules by an equal percentage.[11]

At the outset of the proceeding on April 15, 2019, upon agreement of the Parties, the Direct and Surrebuttal Testimonies of Vote Solar witness Barnes were stipulated into the record and counsel for Vote Solar was excused from the remainder of the hearing. Also, upon agreement of the Parties, the Direct and Surrebuttal Testimonies and Exhibits of Sierra Club witness Hausman were stipulated into the record.

Due to scheduling constraints, the Parties agreed that ORS witness Parcell could testify out of order. Witness Parcell testified regarding the appropriate ROE based on his analyses, the Company's capital structure, and his recommended ROE range of 9.1 to 9.5 percent for the Company.

Subsequent to the testimony of Mr. Parcell, the Company continued the presentation of its case with a panel consisting of witnesses Kerin and Wright. Witness Kerin testified regarding DEP's request for recovery of expenses the Company incurred to comply with environmental requirements for the disposal of coal combustion residuals ("CCRs") between July 1, 2016 and December 31, 2018. Witness Kerin responded to ORS witness Wittliff's and SCEUC witness O'Donnell's recommendations regarding the treatment of costs related to North Carolina's Coal Ash Management Act ("CAMA"). Witness Wright supported DEP's request for recovery of costs

[11] On March 29, 2019, DEP filed a stipulation between it and Nucor. In the stipulation, DEP and Nucor agreed to apply the final approved LGS class percentage revenue increase to the revenues for the LGS-CUR-TOU rate schedule. Also, the stipulation modified DEP's applied for treatment of the EDIT rider such that 1) it reduced DEP's originally proposed offset amount of the DERP offset to $6 million, and 2) set the return period of the deferred revenue to three years instead of five years.

related to coal ash disposal expenses and testified to the Company's actions. Witness Coppola testified in response to ORS witness Morgan's testimony regarding the beneficial reuse contract the Company entered into with CertainTEED Gypsum NC, Inc. and the ensuing litigation fees and settlement payments. DEP then presented its final panel of witnesses, Sullivan and Hevert. Witness Sullivan addressed DEP's financial objectives, capital structure, cost of capital, cost of debt, and the Company's upcoming capital needs. Witness Hevert recommended an ROE of 10.75 percent. The methodology he used recommended a range of 10.25 percent to 11 percent.

Witness Chriss testified on behalf of Walmart regarding the Company's proposed increase to the revenue requirement and ROE, the impact those proposals would have on customers and what the national ROE trends are for vertically-integrated electric utilities. SCEUC witness O'Donnell testified regarding DEP's cost to South Carolina manufacturers, DEP's costs related to coal ash disposal and remediation, and DEP's real time pricing rates.

The Commission reconvened on April 16, 2019, with an appearance from John Bowen, Jr., Esquire, who spoke on behalf of the South Carolina Farm Bureau ("Farm Bureau") regarding comments made at the public night hearings and a letter filed in this Docket on April 9, 2019. Mr. Bowen updated the Commission on the ongoing collaborative efforts made by DEP to resolve some of the Farm Bureau's concerns.

ORS stipulated into the record the testimonies of witnesses Sandonato and Schellinger. The testimony of ORS witness Schellinger recommended the Commission authorize a rate reduction of $9,977,484 million due to the TCJA to be flowed back to customers in the same manner proposed by DEP. Anthony Sandonato testified regarding the Company's Grid Improvement Plan, consideration of which has been dismissed from this proceeding.

ORS presented witness Ruoff, who testified regarding potential impacts to low-income customers if the Commission adopted the Company's positions outlined in its rebuttal testimony and asserted that the Company's request for recovery was in excess of reasonable levels necessary to support safe, reliable, and high-quality utility service. ORS next presented a panel consisting of witnesses Seaman-Huynh and Wittliff. Witness Seaman-Huynh addressed the Company's cost of service study, depreciation study, rate design, revenue verification, and revenue requirement distribution. According to witness Seaman-Huynh, based on ORS's adjustments and a 9.30 percent ROE, as recommended by ORS witness Parcell, ORS recommends a reduction to DEP's proposed revenue increase from $68,668,000 (as filed in Company witness Bateman's Exhibit 1) to $30,562,000, which equates to an approximate 55 percent reduction or approximately $38,106,000, excluding the refund from the EDIT Rider. Witness Wittliff testified regarding the differences between the federal regulations governing coal ash disposal and remediations as compared to North Carolina's CAMA. Wittliff outlined his calculations representing the increased costs DEP seeks to charge its South Carolina customers.

ORS presented its next panel of witnesses Major and Payne. ORS witness Major explained the findings and recommendations as reflected in the ORS Audit Exhibits resulting from ORS' examination of DEP's Application and supporting books and records. Witness Payne offered recommendations for the treatment of the Company's requests for recovery of accounting deferrals.

On April 16, 2019, ORS and DEP informed this Commission that they had reached an agreement in principle on several issues in this proceeding, thus resolving disputed issues between

them on several adjustments. On April 17, 2019, ORS filed a Stipulation[12] ("Adjustments Stipulation") stating ORS and DEP had reached agreements on the following adjustments: #20[13] (Normalization of Storm Costs); #28 (Credit Card Fees); #25 (Rate Case Expenses); #15 (End-of-Life Nuclear Reserve); #39 (Nuclear Materials and Supplies); and #21 (Adjustment to Non-Labor O&M).

The hearing reconvened on April 17, 2019, with ORS presenting its final panel of witnesses Morgan and Hamm. Witness Morgan testified regarding ORS's recommendations regarding certain pro forma adjustments concerning DEP's proposed end of life nuclear fund, the deferred cost balance related to SC AMI, storm costs, legal expenses, ongoing payment obligations with CertainTEED Gypsum NC, Inc., and adjustment for nuclear materials and supplies inventory. Witness Hamm testified regarding ORS's recommendation to disallow certain legal expenses, asserting that the Company failed to meet its legal and operations obligations and its burden of proof that the expenses incurred are both fair and reasonable.

The Parties submitted proposed orders and legal briefs on May 1, 2019.

III. STATUTORY STANDARDS AND REQUIRED FINDINGS

The evidence supporting DEP's business and legal status is contained in its Application filed by Applicant, testimony, and in prior Commission Orders in the docket files of the Commission, of which the Commission takes judicial notice. DEP is (1) a limited liability company duly organized and existing under the laws of the State of North Carolina; (2) duly authorized by its Articles of Organization to engage in the business of generating, transmitting,

[12] A Revised Stipulation was also filed removing the reference to an Exhibit 1. See Revised Stipulation https://dms.psc.sc.gov/Attachments/Matter/7e05ccd9-1532-4d1f-9c63-ce9450552d1d

[13] In the Adjustments Stipulation this adjustment is improperly referred to as #22, however the title "Normalization of Storm Costs," is correct.

distributing, and selling electric power and energy; (3) a public utility under the laws of the State of South Carolina, and in its operations in this State are subject to the Commission's jurisdiction over DEP's rates, charges, tariffs, and terms and conditions of service as generally provided in S.C. Code Ann. Sections 58-27-10 *et seq.*; (4) a public utility under the laws of the State of North Carolina, and its operations in that state are subject to the jurisdiction of the North Carolina Public Utilities Commission; and (5) a public utility under the Federal Power Act, and certain of its operations are subject to the jurisdiction of the Federal Energy Regulatory Commission. (Application, p. 3, ¶ 5).

The current rates now in effect, excluding riders and changes in the fuel cost component, were approved in Commission Order No. 2016-871, Order Approving Increase in Rates and Charges and Settlement Agreement, in Docket No. 2016-227-E. (Application, p. 3, ¶ 6). The appropriate Test Period for purposes of this Application is the twelve-month period ending December 31, 2017. *Id.*

The Application, testimony, exhibits, affidavits of publication, and public notices submitted by DEP are in compliance with the procedural requirements of the South Carolina Code of Laws and the Regulations promulgated by this Commission.

These findings of fact are informational, procedural and jurisdictional in nature, and the matters which it involves are not contested by any party.

South Carolina Code Ann. § 58-27-810 provides, "[e]very rate demanded or received by any electrical utility . . . shall be just and reasonable." The Commission must determine a fair rate of return that the utility should be allowed the opportunity to earn after recovery of the expenses of utility operations. The legal standards for this determination are set forth in *Federal*

Power Comm'n v. Hope Natural Gas Co., 320 U.S. 591, 602-03(1944) ("*Hope*") and *Bluefield Water Works and Improvement Co. v. Public Service Commission of West Virginia*, 262 U.S. 679, 692-93 (1923) ("*Bluefield*").

Bluefield holds that:

> What annual rate will constitute just compensation depends upon many circumstances, and must be determined by the exercise of a fair and enlightened judgment, having regard to all relevant facts. A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures. The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties. A rate of return may be reasonable at one time and become too high or too low by changes affecting the opportunities for investment, the money market and business conditions generally. *Bluefield Water Works and Improvement Co. v. Public Service Commission of West Virginia*, 262 U.S. at 692-93.

This Commission and the South Carolina courts have consistently applied the principles set forth in *Bluefield* and *Hope*. *Southern Bell Tel. &Tel. Co. v. Pub. Serv. Comm'n,* 270 S.C. 590 (1978). Quoting *Hope*, the South Carolina Supreme Court held:

> ...Under the statutory standard of 'just and reasonable' it is the result reached not the method employed which is controlling...The ratemaking process under the Act, i.e., the fixing of 'just and reasonable' rates, involves the balancing of investor and the consumer interests. *Federal Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591, 602-03(1944).

As related to these matters, the South Carolina Supreme Court has reasoned as follows: "the fixing of 'just and reasonable' rates involves the balancing of the investor and the consumer interests...." *Southern Bell Tel. & Tel. Co. v. Pub. Serv. Comm'n*, 270 S.C. 590, 596-97 (1978) ("*Southern Bell*") (quoting *Federal Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591, 602-03 (1944) ("*Hope*").

This Commission must exercise its dual responsibility of permitting utilities an opportunity to earn a reasonable return on the property it has devoted to serving the public, on the one hand, and protecting customers from rates that are so excessive as to be unjust or unreasonable, on the other, by "(a) Not depriving investors of the opportunity to earn reasonable returns on the funds devoted to such use as that would constitute a taking of private property without just compensation[, and] (b) Not permitting rates which are excessive." *Southern Bell*, 270 S.C. at 605. Ultimately, this balancing act takes place within the context of a utility setting forth proposed rates—pursuant to Title 58, Chapter 27, Article 7 of the S.C. Code of Laws—for the purpose of the utility receiving revenue sufficient to yield a reasonable return.

Additionally, the Commission's determination of a fair rate of return must be documented fully in its findings of fact and based exclusively on reliable, probative, and substantial evidence on the whole record. *Porter v. South Carolina Public Service Commission*, 504 S.E.2d 320, 323 (1998).

Practically, although the burden of proof in showing the reasonableness of a utility's costs that underlie its request to adjust rates ultimately rests with the utility, the S.C. Supreme Court has concluded that the utility is entitled to a presumption that its expenses are reasonable and were incurred in good faith. *Hamm v. S.C. Pub. Serv. Comm'n*, 309 S.C. 282, 422 S.E.2d 110 (1992)

(internal citations omitted). However, according to *Utils. Servs. of S.C., Inc. v. S.C. Office of Regulatory Staff*, 392 S.C. 96, 110, 708 S.E.2d 755, 762–63 (2011) "...[I]f an investigation initiated by ORS or by the PSC yields evidence that overcomes the presumption of reasonableness, a utility must further substantiate its claimed expenditures."

The object of using test year figures is to reflect typical conditions. The company has the benefit of choosing its test year. Where an unusual situation indicates that the test year figures are atypical, the Commission should adjust the test year data. *Parker v. S.C. Pub. Serv. Comm'n*, 280 S.C. 310, 312, 313 S.E.2d 290, 292 (1984). The Commission must make adjustments for known and measurable changes in expenses, revenues, and investments so that the resulting rates will accurately and truly reflect the actual rate base, net operating income, and cost of capital. *Southern Bell*, 270 S.C. at 602–03, 244 S.E.2d at 284–85.

The Commission's Findings of Facts and Conclusions reflect these standards.

IV. REVIEW OF THE EVIDENCE AND EVIDENTIARY CONCLUSIONS

A. Cost of Capital

Return on Equity

ORS's Position

ORS witness Parcell testified that he has provided testimony as a ROE and Cost of Capital expert witness on several occasions before this Commission since the early 1980s. (R. p. 801-2, ll. 4-6). He further stated that he has testified in over 570 utility proceedings in approximately 50 regulatory agencies across the United States and Canada. (R. p. 801-1, ll. 21-22, p. 801-2, l. 1).

According to Mr. Parcell, public utility rates are normally established in a manner designed to allow the recovery of their costs, including capital costs. (R. p. 801-4, ll. 14-15). Utilities are

allowed to recover a level of operating expenses, taxes, and depreciation reasonable for rate-setting purposes, and are granted an opportunity to earn a fair rate of return on the assets utilized (i.e., rate base) in providing service to their customers. (R. p. 801-4, ll. 17-18, p. 801-5, ll. 1-2). From an economic standpoint, a fair rate of return is normally interpreted to mean that an efficient and economically-managed utility will be able to maintain its financial integrity, attract capital, and establish comparable returns for similar risk investments. (R. p. 801-5, ll. 16-18).

Regarding the regulatory standards, Mr. Parcell's testimony is based on his understanding that the United States Supreme Court decisions of *Bluefield Water Works and Improvement Co. v. Public Serv. Comm'n of West Virginia*, 262 U.S. 679 (1923) and *Federal Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591 (1942) provide the controlling standards for a fair rate of return. (R. p. 801-5, ll. 21-23). According to Mr. Parcell, the three economic and financial parameters in the *Bluefield* and *Hope* decisions – comparable earnings, financial integrity, and capital attraction – reflect the economic criteria encompassed in the "opportunity cost" principle of economics. (R. p. 801-8, ll. 9-11). The opportunity cost principle provides that a utility and its investors should be afforded an opportunity (not a guarantee) to earn a return commensurate with returns they could expect to achieve on investments of similar risk. (R. p. 801-5, ll. 11-14). Neither the courts nor economic/financial theory has developed exact and mechanical procedures for precisely determining the cost of capital. (R. p. 801-8, ll. 19-22). However, there are several useful models that can be employed to assist in estimating the cost of common equity ("return on equity" or "ROE"), which is the capital cost component that is the most difficult to estimate. (R. p. 801-8, ll. 22-24). These include the Discounted Cash Flow ("DCF"), Capital Asset Pricing Model ("CAPM"), Comparable Earnings ("CE"), and risk premium ("RP") methods. (R. p. 801-8, ll. 24-

25). While Mr. Parcell did not directly employ a RP model in his analyses, his CAPM analysis is a form of the RP methodology. (R. 801-8, ll. 25-27).

Mr. Parcell performed independent studies and made recommendations of the current cost of equity capital for DEP and because DEP is a subsidiary of Duke Energy Corporation, he also evaluated this entity in his analyses. (R. p. 801-2, ll. 10-12). Mr. Parcell's overall cost of capital recommendations for DEP is shown on Schedule 1 and are summarized as follows:

	Percent	Cost	Return
Long-Term Debt	47.00%	4.16%	1.96%
Common Equity	53.00%	9.10-9.50%	4.82-5.04%
Total	100.00%		6.78-7.00%

(R. p. 797, ll. 13-19, p. 801, l. 1).

Mr. Parcell recommended as reasonable a range of ROE from 9.10% - 9.50% and a cost of capital of 6.84 percent. Within the range recommended by Mr. Parcell, he testified that he thought a 9.30 percent return on equity was appropriate. (R. p. 801-3, l. 1)

According to Mr. Parcell, the first step in performing his analyses was to develop the appropriate capital structure. (R. p. 801-3, ll. 6-7). DEP proposed a hypothetical capital structure with 47 percent long-term debt and 53 percent common equity, which DEP witness Sullivan describes as the "optimal" capital structure for the Company. (R. p. 801-3, ll. 7-10). Mr. Parcell also used this capital structure. (R. p. 801-3, l. 10) The second step in a cost of capital calculation is to determine the embedded cost rate of debt. (R. p. 801-3, ll. 11-12). DEP and Mr. Parcell proposed to use a cost rate of 4.16 percent for long-term debt, the rate as of December 31, 2018. (R. p. 803-17, ll. 11-12). The third step in the cost of capital calculation is to estimate the cost of

equity. (R. p. 801-3, ll. 14). Mr. Parcell employed three recognized methodologies to estimate DEP's cost of equity, each of which he applied to two proxy groups[14] of electric utilities, one of which witness Parcell developed and the other developed by DEP witness Hevert. (R. p. 801-3, ll. 14-16). These three methodologies and his findings are:

Methodology	Midpoint
Discounted Cash Flow (DCF)	9.10%
Capital Asset Pricing Model (CAPM)	6.45%
Comparable Earnings (CE)	9.50%

Based upon these findings, Mr. Parcell concluded that DEP's cost of equity is 9.30 percent, which falls within a range of 9.10 percent to 9.50 percent and is based upon his DCF and CE model results models, respectively. (R. p. 801-4, ll. 3-5). Combining these three steps into the weighted average cost of capital results in an overall cost of capital of 6.73 percent to 6.94 percent (which incorporates an 9.10 percent to 9.50 percent cost of equity). (R. p. 801-4, ll. 6-8). Witness Parcell's specific cost of capital recommendation, put forth in his direct testimony, is the mid-point of this range, or 6.84 percent, based on a 9.30 percent cost of equity. (R. p. 801-4, ll. 8-9).

In his surrebuttal testimony, Mr. Parcell testified in response to the testimony of DEP witness Hevert, who recommended a ROE of 10.75 percent. Mr. Parcell's testimony demonstrated that each of Mr. Hevert's ROE methodologies overstates the appropriate ROE for DEP. (R. p. 798, ll. 24-25, p. 799, l. 1). According to Mr. Parcell, the primary differences between his 9.30

[14] Witness Parcell's proxy groups were comprised of Companies carefully chosen by witness Parcell to objectively evaluate DEP's cost of capital. The six criteria employed by witness Parcell in creating his proxy groups are: 1) Market cap of $20 billion or greater; 2) Common equity ratio 40 percent or greater; 3) Value Line Safety rank of 1 or 2; 4) S&P and/or Moody's bond ratings of BBB or A; 5) Currently pays dividends; and, 6) Not currently involved in a major merger or acquisition. (R. p. 801-28, ll. 1-7).

percent recommended ROE – and by necessity, his range of 9.10 – 9.50 percent ROE - and Mr. Hevert's 10.75 percent ROE recommendation are as follows:

1. Mr. Hevert only considered a single source of "growth," earnings per share ("EPS") forecasts in his single-stage DCF. In contrast, witness Parcell considered several indicators of growth estimates. In his multi-stage DCF, Mr. Hevert focused on historic measures of GDP growth, which is inconsistent with his refusal to consider historic growth in his single-stage DCF. (R. p. 799, ll. 1-13).
2. With respect to the CAPM method, Mr. Hevert used interest rate projections as the risk-free rate whereas witness Parcell used current interest rates. It is noteworthy that Mr. Hevert's risk premium measure greatly exceeded the historic level of risk premiums. (R. p. 799, ll. 14-19).
3. As for the CE method, Mr. Hevert did not employ a CE analysis as part of his testimony, whereas witness Parcell did. This third method of analyzing an appropriate ROE for DEC considered the opportunity cost of capital investment. (R. p. 799, ll. 19-24).

According to Mr. Parcell, at 10.75 percent would exceed every ROE award in the continental U.S. since at least 2016. (R. p. 800, ll. 1-4). Witness Parcell testified that one impact of the Great Recession has been a reduction in actual and expected investment returns and a corresponding reduction in capital costs. (R. p. 801-11, ll. 15-16). Regulatory agencies throughout the U.S. have recognized the decline in capital costs by authorizing lower ROEs for regulated utilities in each of the last several years.[15] (R. p. 801-11, ll. 19-20).

[15] Mr. Parcell cited "Regulatory Research Associates, 'Regulatory Focus.' January 31, 2019."

Regarding DEP's security ratings, Mr. Parcell testified that DEP provided the following information:

Rating Agency	Senior Secured	Senior Unsecured
Moody's	Aa3	A2
S&P	A	A-

(R. p. 801-17, l. 10). According to witness Parcell, DEP has the highest ratings among the Duke Energy utility subsidiaries, except for Duke Energy Carolinas, LLC. (R. p. 801-18, ll. 2-3). Additionally, witness Parcell testified that DEP's ratings were generally higher than most electric utilities in the United States and that its ratings are indicative of relatively lower risk. (R. p. 801-18, ll. 6-10). According to witness Parcell, DEP is one of only 11 out of 125 electrical utilities with AA senior debt rating, meaning DEP is in the top 10 percent. (R. p. 814, ll. 6-25, p. 815, ll. 1-9).

Mr. Parcell testified that ROEs are trending downward due to relatively low interest rates and because regulatory mechanisms exist that reduce the likelihood of under-recovery. (R. pp. 811, 812).

DEP's Position

Company witness Hevert recommended in his direct testimony a ROE of 10.75 percent. (Direct, p. 4, ll. 18-20.) Mr. Hevert contended that, because all financial models are subject to various assumptions and constraints, equity analysts and investors tend to use multiple methods to develop return requirements. (Direct, p. 5, ll. 4-6). He therefore relied on three approaches to develop his ROE determination: (1) the Constant Growth and Multi-Stage forms of the DCF

model; (2) the CAPM; and (3) the Bond Yield Plus Risk Premium approach. (Direct, p. 5, ll. 6-9). Witness Hevert testified regarding the capital market environment and addressed the effect those market conditions have on the return investors require in order to commit their capital to equity securities. According to witness Hevert, the TCJA has increased cash flow-related risks for utilities and the recommends the Commission consider the capital market implications of the TCJA as part of its review. (Direct, p. 78, ll. 15-16, p. 79, ll. 7-10). Accordingly, witness Hevert recommended that the Commission "focus on the upper end of the range of analytical results." (Direct, p. 79, ll. 5-6). Based upon his analysis, witness Hevert testified that the Company's ROE was in the range of 10.25 percent-11.00 percent. (Direct, p. 80, ll. 9-10). Witness Hevert testified that his conclusion considered the current capital market environment, including the TCJA, as well as the Company's risk profile relative to the proxy group analytical results with respect to (1) the risks associated with certain aspects of the Company's generation portfolio; (2) the Company's significant capital expenditure plan; (3) the risk associated with severe weather; (4) the risk associated with the Company's regulatory environment; and (5) the cost of issuing common stock. (Direct, p. 81, ll. 3-9).

According to DEP witness Ghartey-Tagoe, the Company is proposing rates be set on a ROE of 10.50 percent as a rate mitigation measure. (R. p. 298-15, ll. 17-22).

According to DEP witness Sullivan, the Company supports witness Hevert's testimony and analysis; however, to mitigate rates, DEP requests a ROE of 10.5 percent. (Direct, p. 5, ll. 21-23, p. 6, l. 1; *See Also* Application of Duke Energy Progress, LLC, Para. 24 (Nov. 8, 2018).

Walmart's Position

According to Walmart witness Chriss, DEP's proposed ROE is higher than the authorized ROE for DEC in South Carolina and DEP in North Carolina. (Direct, p. 7, ll. 15-18). Witness Chriss also observed that DEC's most recent rate case in 2013 resulted in an authorized ROE of 10.20 percent.[16] (Direct, p. 7, ll. 18-19). In 2018, the North Carolina Public Utilities Commission authorized a ROE of 9.90 percent to both DEP and DEC in North Carolina.[17] (Direct, p. 7, l. 21-p. 8, l. 1.).

Witness Chriss testified that DEP's proposed ROE was significantly higher than ROEs approved by other utility regulatory commissions in 2016, 2017, 2018, and so far in 2019. (Direct, p. 10, ll. 11-14). According to data from SNL Financial, a financial news and reporting company, the average of the 111 reported electric utility rate case ROEs authorized by commissions to investor-owned utilities in 2016, 2017, 2018, and so far in 2019, is 9.61 percent. (Direct, p. 10, ll. 14-17). Witness Chriss testified that the average and median values are significantly below the Company's proposed ROE of 10.50 percent and included an exhibit outlining approved ROEs.[18] (Direct, p. 10, ll. 18-20). Therefore, witness Chriss testified that the Company's proposed 10.50 percent ROE is counter to broader electric industry trends. (Direct, p. 10, ll. 20-21).

[16] *See* IN RE: Application of Duke Energy Carolinas, LLC for Authority to Adjust and Increase Its Electric Rates and Charges, Docket No. 2013-59-E, Order No. 2013-661 (Sept. 18, 2013) at 30.
[17] *See* In the Matter of Application by Duke Energy Progress, LLC, For Adjustment of Rates and Charges Applicable to Electric Utility Service in North Carolina, NCUC Docket No. E-2, Sub 1142, Order Accepting Stipulation, Deciding Contested Issues and Granting Partial Rate Increase (Feb. 23, 2018) at 56; In the Matter of Application of Duke Energy Carolinas, LLC, for Adjustment of Rates and Charges Applicable to Electric Utility Service in North Carolina, NCUC Docket No. E-7, Sub 1146, Order Accepting Stipulation, Deciding Contested Issues, and Requiring Revenue Reduction (June 22, 2018) at 32.
[18] *See* Exhibit SWC-3.

Furthermore, witness Chriss testified that in the group reported by SNL Financial, the national average ROE for vertically integrated utilities authorized by state regulatory commissions from 2016 to date is 9.76 percent and overall, the average annual authorized ROE has been trending downward. (Direct, p. 11, ll. 5-7). According to witness Chriss, the average ROE authorized for vertically integrated utilities in 2016 was 9.77 percent, in 2017 it was 9.80 percent, and since the beginning of 2018 it has averaged 9.69 percent. (Direct, p. 11, ll. 7-9). Finally, witness Chriss testified that a 10.50 percent ROE would be the third highest approved ROE for a vertically integrated utility at any time since 2016 if adopted by the Commission. (Direct, p. 11, ll. 11-13).

Commission's Finding

In *Bluefield*, the Supreme Court of the United States outlined the constitutional standards for determining an appropriate rate of return. These standards govern this Commission's determination of an appropriate ROE:

> A public utility is entitled to such rates as will permit it to earn a return upon the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures. The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit, and enable it to raise the money necessary for the proper discharge of its public duties.

Bluefield, 262 U.S. at 692, as quoted in *Southern Bell*, 244 S.E. 2d at 281.

In *Hope*, the Court reaffirmed these principles holding:

> From the investor or company point of view it is important that there be enough revenue not only for operating expenses but also for the capital costs of the business. These include service on the debt and dividends on the stock.... By that standard the return to the equity owner should be commensurate with returns on investments in other enterprises having corresponding risks. That return, moreover, should be

> sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital.

Hope, 320 U.S. at 603.

These decisions hold that (1) a regulated public utility is entitled to rates that allow it the opportunity to earn a return on its invested capital that is equal to that being made at the same time and in the same general part of the country of other investments in business undertakings with similar risks and uncertainties, (2) the return should be such as to assure confidence in the financial soundness of the utility and adequate, under efficient and economic management, to maintain and support its credit and enable it to raise money necessary for proper discharge of its duties, (3) the utility has no right to the kinds of profits that may be realized in highly profitably enterprises.

Additionally, South Carolina law requires "[t]he determination of a fair rate of return must be documented fully in its findings of fact and based exclusively on reliable, probative, and substantial evidence on the whole record." *Porter v. S.C. Public Service Commission*, 332 19 S.C. 93, 98, 504 S.E.2d 320, 323 (1998), citing S.C. Code Ann. § 58-5-240 (Supp. 2003). In making its decision, this Commission cannot make a determination based upon surmise, conjecture or speculation. *See Herndon v. Morgan Mills, Inc.*, 246 S.C. 201, 143 S.E.2d 376 (1965). Finally, South Carolina law states that opinion testimony, without an underlying showing of the evidentiary basis on which it relies, is of no probative value. *Parker v. South Carolina Public Service Comm'n*, 281 S.C. 215, 217, 314 S.E.2d 597, 599 (1984).

The Commission is the fact finder in rate proceedings and must balance the interests of the using and consuming public with that of the utility appearing before it. The Commission's Order must be based upon substantial evidence in the whole record. As a result, this Commission is bound by the parameters of evidence put forth by the parties. Accordingly, the Commission has

carefully evaluated the evidence submitted in this case as to what ROE DEP should be authorized the opportunity to earn.

Determining a proper ROE is both an art and a science. (R. p. 345, ll. 18-20). In evaluating an appropriate ROE, the Commission must not base the approved ROE exclusively on a comparative analysis; however, it may look at businesses in this part of the country with similar risks and uncertainties as those that attend DEP. DEP witness Hevert testified that since 2014, ROEs for vertically integrated electric utilities authorized in Florida, Mississippi, North Carolina, South Carolina, Tennessee and Georgia ranged from 9.85 percent to 10.55 percent, with an average of 10.10 percent. (Rebuttal, p. 12, n. 5). Additionally, according to DEP witness Hevert, average authorized ROEs of across the 71 vertically integrated utilities for which Regulatory Research Associates reports ranged from 9.62 percent to 9.95 percent since 2016. (Rebuttal, p. 100, l. 1). According to Walmart witness Chriss, the average ROE for vertically integrated utilities authorized from 2016 through present is 9.76 percent and has been trending downward. (Direct, p. 11, ll. 5-7). ORS witness Parcell testified that average ROEs authorized by state regulatory agencies have declined and continue to remain relatively low through 2018, with the average electric ROE in 2018 being 9.56 percent. (Direct, p. 15, ll. 10).

The Commission also considered the relative risk of DEP. While both DEP witness Hevert and ORS witness Parcell utilized methodologies in their analyses that account for risk, witnesses also explicitly testified regarding DEP's riskiness. According to ORS witness Parcell, DEP has the highest senior unsecured ratings among the Duke Energy utility subsidiaries, except for DEC. (Direct, p. 18, ll. 2-3). Additionally, DEP's higher ratings are indicative of relatively lower risk. (Parcell Direct, p. 18, ll. 10). DEP witness Hevert testified that DEP's capital-intensive projects

such as coal-fired and nuclear generation facilities make it subject to certain risks. (Direct, p. 42, ll. 21-22). However, DEP witness Sullivan testified that rating agencies believe that DEP operates in a constructive regulatory environment that supports long-term credit quality and view the Company's position within the Duke Energy corporate family as credit supportive. (Direct, p. 10, ll. 6-9). Mr. Hevert's testimony urges the Commission to conclude that DEP, although financially sound and with a lower risk relative to other comparable utilities, should be viewed as a somewhat risky investment, thus justifying his high ROE recommendation. None of the DEP witnesses, however, claimed at any point in the presentation of the Company's case that DEP is on unstable financial footing or has any particular or unique risk not typically encountered by other electric utilities.[19] In fact, witness Parcell testified that DEP is within the top 10 percent of utilities nationally regarding credit ratings and is, thus, a lower risk company. Throughout his Direct and Surrebuttal Testimonies, Mr. Parcell stated that Mr. Hevert's analyses show a consistent pattern of choosing data and methodologies that result in inflated ROE conclusions. Mr. Parcell further asserted that Mr. Hevert's use of several "factors" to create more risk for DEP are all factors that are already considered by the rating agencies. In short, Mr. Parcell testified that Mr. Hevert is essentially "double-counting" risk and the end result is an artificially inflated ROE recommendation. (Direct, p. 57, ll. 1-21, p. 58, ll. 1-2).

While ORS witness Parcell was criticized by DEP witness Hevert for his application of the CAPM, witness Parcell did not use his CAPM analysis in formulating his recommended ROE in this case. (Hevert Rebuttal, p. 57, ll. 10-12, Parcell Direct, p. 45, ll. 18-21). By only using DCF and CE analyses to produce his recommended ROE range, and excluding his CAPM analysis,

[19] Witness Sullivan testified that DEP does not have trouble accessing the capital markets.

witness Parcell evidenced his efforts to produce a fair and reasonable recommendation to the Commission. Conversely, DEP witness Hevert recommended that both of his DCF analyses be given little weight by the Commission, due to their yielding results which he believed to be too low. (Rebuttal, p. 8, ll. 1-3). Thus, Mr. Parcell attempted to be unbiased by discounting his CAPM results, which he judged to be too low, and Mr. Hevert chose to discount two (2) methodologies that he also claimed to be too low, thus aiding in his production and recommendation of an inequitably high ROE.

Mr. Parcell provided evidence that, from 2017 to 2018, ROEs allowed by regulatory jurisdictions across the country for all electric utilities averaged 9.59 percent with a median ROE of 9.58 percent. (Parcell Direct, p. 70, DCP-2, Schedule 3). This national average is only 9 basis points higher than Mr. Parcell's recommended range, but 116 basis points lower than Mr. Hevert's recommended 10.75 percent ROE. Testimony and supporting materials submitted to the Commission confirmed a decline in ROEs across the country in recent years, supports the strength of market conditions, and indicates anticipated upward trend in interest rates in the near term. The above facts make it clear that Mr. Hevert's ROE recommendation is less credible than the ROE range recommended by Mr. Parcell. South Carolina customers should not pay rates that are based on a ROE higher than the national average.

After consideration of the substantial evidence on the whole record, the Commission concludes that it is not fair and reasonable or a fair balancing of the interests of the Company and its customers to approve a ROE of 10.75 percent or 10.50 percent.[20] While a public utility is

[20] The Commission notes that DEP witness Hevert's proposed ROE of 10.75% would be the highest authorized ROE approved in the continental U.S. over the past 8 years. (Parcell Surrebuttal, p. 6, ll. 3-7).

entitled to earn a fair return, it has no entitlement or constitutional right to earn profits comparable with highly profitable enterprises or speculative ventures. *Bluefield v. Pub. Serv. Comm'n*, 262 U.S. 679, 690.

Both ORS witness Parcell and Walmart witness Chriss presented ROE recommendations to be awarded to DEP; however, only witness Parcell presented a ROE recommendation resulting from a thorough analysis that considers the factors set forth in *Hope* and *Bluefield*. Mr. Parcell's recommended range of return accounts for the ROEs approved for entities with similar risks as those of DEP in the same area while assuring the financial soundness of DEP. Additionally, Mr. Parcell's range is supported by authorized ROEs nationwide.

The South Carolina Supreme Court has held that the Commission must determine a fair and reasonable rate of return and must document fully the evidence to justify the rate of return which they award. *Heater of Seabrook, Inc. v. Pub. Ser'v Comm'n of S.C.*, 324 S.C. 56, 64, 478 S.E.2d 826, 830 (1996) citing *Nucor Steel v. S.C. Pub. Ser'v Comm'n*, 312 S.C. 79, 439 S.E.2d 270 (1994). This Commission finds that the record of evidence does not support approving the ROE recommended by DEP witness Hevert. The Commission received extensive testimony from Walmart witness Chriss that ROEs are trending downward, and ORS witness Parcell that supports the Commission's finding that a ROE within a range of 9.10 – 9.50 percent for DEP is both fair and reasonable. Evaluation of the analyses performed by the testifying experts and based upon the evidence in the record, the reasonableness of Mr. Parcell's ROE recommendation is evident. Therefore, this Commission finds that an award of a 9.50 percent ROE is fair, reasonable, and supported by substantial evidence on the whole record.

Cost of Debt

ORS's Position

In determining the cost of debt, witness Parcell utilized 4.16 percent, which reflects the actual cost of debt for DEP. (R. p. 803-4, ll. 9-11). ORS witness Parcell accepted the Company's revision to update the cost of long-term debt as of December 31, 2018. (R. p. 803-17, ll. 11-12).

DEP's Position

DEP witness Sullivan testified that he recommends using DEP's updated 4.16 percent cost of debt, calculated as of December 31, 2018. (Revised Rebuttal, p. 3, ll. 1-2).

Walmart's Position

In witness Chriss' direct testimony, which occurred prior to the update of DEP's cost of debt, he testified that the Company proposed a cost of debt of 4.06 percent in its Application. (Direct, p. 6, ll. 18-20).

Commission Finding

Regarding the Commission's finding on this issue – as well as issues addressed elsewhere in this order – South Carolina law requires "[t]he determination of a fair rate of return must be documented fully in its findings of fact and based exclusively on reliable, probative, and substantial evidence on the whole record." *Porter v. S.C. Public Service Commission*, 332 19 S.C. 93, 98, 504 S.E.2d 320, 323 (1998), citing S.C. Code Ann. § 58-5-240 (Supp. 2003). In making its decision, this Commission cannot make a determination based upon surmise, conjecture or speculation. *See Herndon v. Morgan Mills, Inc.*, 246 S.C. 201, 143 S.E.2d 376 (1965). Finally, South Carolina law states that opinion testimony, without an underlying showing of the evidentiary

basis on which it relies, is of no probative value. *Parker v. South Carolina Public Service Comm'n*, 281 S.C. 215, 217, 314 S.E.2d 597, 599 (1984).

The reliable and probative substantial evidence in the record supports a finding that DEP's cost of debt is 4.16 percent for this proceeding.

Capital Structure

ORS's Position

Regarding the Company's capital structure of DEP, Mr. Parcell employed the hypothetical structure as proposed in DEP's application of 47 percent debt and 53 percent common equity. (R. p. 801-26, ll. 18-20, p. 801-21, l. 1).

DEP's Position

DEP witness Sullivan testified that a capital structure ratio of 47 percent debt and 53 percent common equity was optimal. (Direct, p. 15, l. 13-14).

Walmart's Position

In witness Chriss' direct testimony, he testified that the Company proposed a capital structure ratio of 53 percent equity and 47 percent debt. (Direct, p. 6, ll. 18-20).

Commission Finding

The evidence in the record supports a finding that DEP's capital structure ratio utilized to determine rates should be the hypothetical ratio of 53 percent equity and 47 percent debt.

Table 1 below indicates the capital structure of the Company, the cost of debt, the cost of equity as approved in this Order, and the resulting rate of return on rate base:

Table 1: Summary of Overall Rate of Return

Type of Capital	Ratios	Cost Rate	Weighted Cost Rate
Long-Term Debt	47.00%	4.16%	1.96%
Common Equity	53.00%	9.50%	5.04%
Total	100.00%		6.99%

B. Recovery of Coal Ash Expense

ORS's Position

Regarding DEP's requested recovery of expenses related to coal ash, ORS presented the testimonies of Dan Wittliff and Michael Seaman-Huynh. Mr. Wittliff testified to the evolution of coal ash management regulations in order to provide context for the development of the federal CCR rules and the North Carolina CAMA. (R. p. 1115-8, ll. 13-16). According to Mr. Wittliff, the unpermitted discharge of approximately 27 million gallons of coal ash wastewater and an estimated 39,000 tons of coal ash into the Dan River, which occurred through two pipes from Dan River's primary coal ash basin, played a deciding role in the development of North Carolina's CAMA in its present form, not only accelerating the timing of action required, but also limiting the options to remediate and close coal combustion residuals impoundments more than would eventually occur under the CCR Rule. (R. p. 1115-15, ll. 13-23). Witness Wittliff testified that, in addition to language contained within North Carolina's CAMA and legislative drafts of what eventually became CAMA, the court cases and subsequent plea agreements (see Hearing Exhibit No. 59, Wittliff Direct Exhibits DJW-5.1 – DJW-5.4) demonstrate that DEC and DEP were criminally and civilly negligent in their operations and maintenance of the impoundments for years

prior to the enactment of CAMA, confirming that DEC and DEP failed to responsibly address and correct these issues adequately – and consequently in a much less costly – manner than it is currently being required to do. (R. p. 1115-16, ll. 16-22). Witness Wittliff also testified to an excerpt from an early version of CAMA in which the NC General Assembly draft legislation attributed CAMA to the Dan River spill. (R. p. 1115-18, ll. 3-35, p. 1115-19, ll. 1-15). According to witness Wittliff's testimony, his research indicated that the NC General Assembly only mentioned coal ash sparingly between February 2010 and January 2014. (R. p. 1115-20, ll. 1-33, p. 1115-21, ll. 1-7). Additionally, the South Carolina General Assembly has not passed legislation that is similar to North Carolina's CAMA. (R. p. 1115-21, l. 8-9). Witness Wittliff testified that North Carolina's CAMA is significantly more restrictive and stringent than the federal CCR Rule (R. p. 1115-21, ll. 21-22) and gave specifics on certain differences between North Carolina's CAMA and the federal CCR rule. (R. pp. 1115-21-1115-25). Additionally, witness Wittliff testified that North Carolina's CAMA rules resulted in additional expenses being incurred at DEP's Asheville and Sutton plants, due to an accelerated closure schedule, which the federal CCR rule would have otherwise required. (R. p. 1115-23, ll. 4-120). Further, witness Wittliff testified and recommended disallowance for costs related to:

1. Expenditures for plants and impoundments not covered at all by the federal CCR rule (Cape Fear falls into this category).
2. Expenditures for closure and/or excavation options not required under the federal CCR rule but required under North Carolina's CAMA or North Carolina court decisions (Asheville, Cape Fear, H.F. Lee, Sutton, and Weatherspoon fall in this category).

3. Expenditures for actions that would not have been required at this time under the federal CCR rule but are subject to accelerated schedules under North Carolina's CAMA or other state law (Sutton and Asheville fall into this category).

(R. p. 1115-30, ll. 8-12, p. 31, ll. 11-18).

According to witness Wittliff, ORS has taken the position that North Carolina laws, over which DEP's South Carolina customers have no meaningful input, should not place an additional burden on the ratepayers of South Carolina. (R. p. 1115-31, ll. 2-6).

Regarding costs incurred at the DEP plant H.F. Lee, witness Wittliff testified that DEP's beneficiation project at H.F. Lee falls under the "CAMA-only" category, and the ratepayers of South Carolina should not have to reimburse the Company for expenses related to North Carolina's CAMA-only beneficiation requirement. (R. p. 1115-36, ll. 1-4). Witness Wittliff testified that, as a result of his December 2018 site visit to H.F. Lee, he learned that the beneficiation plants are to be built and commissioned between 2019 and 2021 and out of spec ash will be landfilled off-site and qualifying ash will largely be sold to concrete plants. (R. p. 1115-36, ll. 18-20). Based upon this information and his observations during his site visit, witness Wittliff concluded that most of the costs incurred in 2018 appear to be related to beneficiation efforts and not compliance with the federal CCR rules. (R. p. 1115-36, ll. 20-23). According to witness Wittliff, the federal CCR rule does not require beneficiation and as a result, no savings could accrue to customers as a result of beneficiation performed pursuant to North Carolina's CAMA. (R. p. 1212, ll. 5-10). For this reason, witness Wittliff recommends disallowing the difference between the 2018 spend through September 30 ($20,599,578) and the average of the previous three (3) years $11,391,867 for a total disallowance of $9,207,711. (R. p. 1115-36, l. 23-p. 1115-37, ll. 1-2).

Regarding costs incurred at the DEP plant Sutton, witness Wittliff testified that the federal CCR rule does not require the closure of Sutton and therefore he reasonably concluded that the closure of Sutton was directed by North Carolina's CAMA and the North Carolina court orders mentioned by DEP witness Kerin. (R. p. 1115-37, ll. 16-21). Witness Wittliff further clarified that because Sutton was designated as a high priority CAMA site, closure was required to be completed two years earlier – by August 1, 2019 instead of August 5, 20201 – than it would have been in accordance with federal CCR rules. (R. p. 1117-6, ll. 19-22). As a result of this conclusion, and witness Wittliff's position that DEP should be allowed to recover any planning and engineering costs incurred to comply with federal CCR rules, witness Wittliff's calculation dictated that $186,376,226 of the Company's total $225,525,554 requested recovery of expenses incurred at its Sutton plant be disallowed. (R. p. 1115-38, ll. 13-14, p. 1115-40, ll. 3-6).

Regarding costs incurred at the DEP plant Asheville, witness Wittliff testified that the extent of compliance measures undertaken by DEP to comply with North Carolina's CAMA and other North Carolina laws resulted in much greater costs than what the federal CCR rules would have required (R. p. 1115-40, ll. 7-19). Witness Wittliff calculated the total costs that would have been incurred at the Asheville plant under the federal CCR rule alone would have been $93,713,264. (R. p. 1115-41, ll. 12-13). As a result, witness Wittliff recommended that $98,220,932 of the $191,934,196 sought by DEP in this proceeding be disallowed (R. p. 1115-42, ll. 5-6).

Regarding costs incurred at the DEP plant Weatherspoon, witness Wittliff testified that DEP has represented its Weatherspoon efforts as beneficiation, which is not required under the

CCR rule. (R. p. 1115-42, ll. 21-23). Accordingly, witness Wittliff's calculations result in a recommended disallowance of $6,044,240.

Witness Wittliff's recommendations and the underlying rationale are summarized in the table below:

Table 5.4: Duke Energy Progress Reimbursement Request and Disallowances					
Plant	Cost Data				
	Total Project (from SCORS DEP 10-08)	Amount Requested (1/1/15-9/30/18, SCORS DEP 10-08)	Disallowance	Rationale	Allowance
Asheville	$ 452,038,793	$ 191,934,196	$ 98,220,932	CAMA High Priority - Accelerated Schedule -- Allow what would have been incurred for "Cap-In-Place" only	$ 93,713,264
Cape Fear	$ 504,918,488	$ 33,631,199	$ 33,631,199	No Federal CCR Requirements	$ -
HF Lee	$ 568,383,919	$ 54,775,180	$ 9,207,711	Beneficiation - CAMA Only -- Allow Engineering and Planning	$ 45,567,469
Mayo	$ 206,749,586	$ 25,384,168	$ -	Federal CCR Compliant	$ 25,384,168
Robinson	$ 179,561,777	$ 11,431,675	$ -	Federal CCR Compliant and SCDHEC Requirements	$ 11,431,675
Roxboro	$ 349,803,401	$ 34,070,691	$ -	Federal CCR Compliant	$ 34,070,691
Sutton	$ 493,219,171	$ 255,525,554	$ 186,376,226	CAMA High Priority - Accelerated Schedule -- Allow Engineering and Planning	$ 69,149,328
Weatherspoon	$ 209,724,346	$ 28,287,429	$ 6,044,240	Excavation and Beneficiation Off-Site -- CAMA -- Allow E&P Through 9/30/17 and Half Costs 10/01/17 through 9/30/18	$ 22,243,189
TOTAL	**$ 2,964,399,482**	**$ 635,040,092**	**$ 333,480,308**		**$ 301,559,784**

(R. p. 1115-45, l. 1).

According to witness Seaman-Huynh, DEP directly assigns certain costs to its North Carolina and South Carolina jurisdictions and that often these costs are derived from laws and

regulations specific to that jurisdiction. (R. p. 1099-6, ll. 10-16). Witness Seaman-Huynh also gave specific examples of instances in which this currently occurs, citing South Carolina Act 236 Distributed Energy Resources and the North Carolina Renewable Energy and Energy Efficiency Portfolio Standard. (R. p. 1099-6, ll. 11-13). Witness Seaman-Huynh also testified to allocated coal ash costs, resulting from a North Carolina law, to South Carolina customers in this proceeding and that ORS recommends the Commission disallow recovery of these costs from South Carolina customers. (R. p. 1099-7, ll. 1-4). According to witness Seaman-Huynh, South Carolina customers should be held harmless for the incremental cost differences attributed to North Carolina state laws. (R. p. 1101-8, ll. 7-8). Additionally, witness Seaman-Huynh testified that the Company has already excluded certain costs from this proceeding that were incurred due to North Carolina law including: recovery of certain costs that are associated with the provision of drinking water to North Carolina residents, the costs to comply with the North Carolina Clean Smokestacks Act, North Carolina Renewable Portfolio Standards, and the North Carolina Competitive Energy Solutions for NC (HB.589) laws. (R. p. 1101-9, ll. 1-5).

Furthermore, costs related to the acquisition by DEP of North Carolina Eastern Municipal Power Association ("NCEMPA") were also removed from this proceeding, as was done in Commission Order No. 2016-871 without objection by the Company. In that case, costs were excluded from recovery because South Carolina does not allow purchase acquisition adjustments, which were granted by the North Carolina Public Utilities Commission pursuant to North Carolina Senate Bill 305, S.L. 2015-3, § 1, eff. April 2, 2015.[21]

[21] *See* https://www.ncleg.net/Sessions/2015/Bills/Senate/PDF/S305v4.pdf.

DEP's Position

According to DEP witness Kerin, DEP is seeking recovery of CCR expenses incurred from July 2016 through September 2018 and estimated costs to be incurred October 2018 through December 2018 related to compliance with applicable regulatory requirements. (R. p. 850-6, ll. 10-12). According to witness Kerin, DEP has become subject to both federal and North Carolina regulatory requirements that mandate closure of its coal ash basins and other ash storage areas. (R. p. 850-6, ll. 18-19).

In June 2010, the United States Environmental Protection Agency ("EPA") proposed national minimum criteria to regulate the disposal of CCRs and the operation and closure of active CCR landfills and existing and inactive CCR surface impoundments. (R. p. 850-7, ll. 14-17). Approximately five years later, the EPA published the final CCR Rule in the Federal Register in April 2015. (R. p. 850-7, ll. 17-18). In South Carolina, DEP entered into a Consent Agreement with the South Carolina Department of Health and Environmental Control ("SCDHEC") in July 2015. (R. p. 850-7, ll. 19-21). Pursuant to this agreement, DEP agreed to excavate its coal ash basins and ash storage areas at the Robinson Steam Station in Darlington County, South Carolina. (R. p. 850-7, ll. 21-23). Also, in 2014, the state of North Carolina enacted CAMA, which requires that all coal ash basins in North Carolina be closed, either through excavation or via the cap-in-place method. (R. p. 850-8, ll. 3-6). The Company has begun the process of closing, or submitting plans to close, its coal ash basins in accordance with the program with the most restrictive requirements. (R. p. 850-8, ll. 8-10). The Company requested recovery of the incremental compliance costs related to coal ash pond closures incurred starting July 2016 to August 2018 and expected costs from September 2018 to December 2018. (R. p. 850-8, ll. 22-23, p. 850-9, ll. 1-2).

DEP witness Wright testified about the general regulatory principles dealing with the recovery of environmental costs, such as coal ash costs, incurred by electric utilities. Mr. Wright asserts that environmental regulations have evolved over time and have had an impact on the Company. He testifies that, while it had no effect on the federal CCR regulations, there is no doubt that the Dan River spill certainly helped prompt the North Carolina General Assembly to examine the State's and national coal ash disposal policies and regulations and out of this investigation came North Carolina's CAMA. (R. p. 837-17, ll. 5-9). However, he maintains that the DEP coal ash related expenses should be recoverable as proposed by the Company.

SCEUC's Position

According to witness O'Donnell, on February 2, 2014, DEC spilled a large amount of coal ash in the Dan River. (Direct, p. 34, l. 9). Information exposed in the Duke Energy federal plea deal revealed that on two separate occasions, Duke Energy engineers at the Dan River plant requested an immaterial amount of budget funding to pay for video equipment to scope the pipe that later failed. (Direct, p. 34, ll. 11-14). Duke Energy engineers were denied their request. (Direct, p. 34, ll. 14-15). In response to the Dan River spill, the North Carolina Legislature passed CAMA that required the closure of existing coal ash ponds as well as conversion from wet ash to dry ash handling. (Direct, p. 34, ll. 17-20). Subsequently, on December 19, 2014, the EPA issued the CCR Order that provided minimum national criteria for CCR landfills, CCR surface impoundments, and lateral expansion of coal-fired units. (Direct, p. 34, ll. 23-25). According to witness O'Donnell, the CCR federal rule was designated as "self-implementing," meaning that Duke Energy was not under any requirement to act UNLESS it is sued by a state or other entity and loses that lawsuit. (Direct, p. 34, ll. 25-28). Furthermore, witness O'Donnell testified that

Duke Energy management made specific decisions that resulted in the coal ash spill in North Carolina, that in turn, led to the creation of CAMA. (Direct, p. 38, ll. 32-33). Witness O'Donnell's analysis in North Carolina concluded that Duke Energy stockholders should pay 75% of the North Carolina's CAMA costs. (Direct, p. 39, ll. 1-2). According to witness O'Donnell, stockholders should to be held accountable for the actions of Duke Energy executives that led to the Dan River spill, which in turn, led to the passage of North Carolina's CAMA, and given the fact that the DEP coal ash costs are so much higher than utilities operating in a similar manner, he believes consumers and stockholders should share the cleanup coal ash costs 75/25. Direct, p. 44, ll. 7-11).

Additionally, witness O'Donnell testified that North Carolina's CAMA was more stringent than the federal CCR rules. Quoting Mark McEntire, Duke Energy's director of environmental policy, witness O'Donnell said "'[t]he NC law came before the CCR [rule] . . . We find that NC CAMA that is specific to NC is generally driving decision making on a management perspective on coal ash . . . From a comparison perspective the CAMA is generally a good bit more stringent.'" (Surrebuttal, p. 4, ll. 14-18).

Sierra Club's Position

Dr. Ezra Hausman[22] testified regarding the costs and risks associated with continued operation of DEP's Mayo and Roxboro plants and cautioned against the continued investment in coal units that are likely to be uneconomic for customers. (R. p. 786-5, ll. 6-8). Dr. Hausman recommended that the Commission reject DEP's request to recover its $100 million investment in retrofits at the

[22] During the evidentiary hearing, Sierra Club failed to request the Commission accept into the record Exhibits 12, 13, and 14 to Dr. Hausman's testimony. In a post-hearing motion, Sierra Club requested – and no party objected – that the Commission accept those Exhibits into the record under seal. That motion is hereby granted.

Roxboro plant because DEP has not demonstrated that such investment was economically preferable to the early retirement of that plant, when retirement would have allowed ratepayers to avoid both that investment and future capital costs for the plant. (R. p. 786-5, ll. 10-14). In addition, he recommended that the Commission require DEP to complete a comprehensive economic and retirement analysis of each of its coal units. (R. p. 786-5, ll. 15-17). According to Dr. Hausman, this analysis should identify and quantify the total costs of managing past and future coal combustion residuals ("CCR", also referred to generally as "ash") as well as the costs of all future capital investments necessary to continue operating the plants, including additional investments to manage coal ash and other environmental compliance requirements. (R. p. 786-5, ll. 17-21). Dr. Hausman testified this comprehensive analysis should include full consideration of non-fossil-generation alternatives for meeting customer requirements, including transmission enhancements, renewable energy sources, energy efficiency, and storage. (R. p. 786-5, ll. 21-24). According to Dr. Hausman, if the Commission otherwise concludes that DEP's request for recovery of coal ash remediation and cleanup costs in this proceeding to be reasonable and prudent, the Commission should condition its approval on its review of the Company's filing this comprehensive analysis for Commission review. (R. p. 786-5, l. 24-p. R. p. 786-6, l. 3). According to Dr. Hausman, this will allow the Commission to consider whether DEP's coal ash remediation investments provide commensurate benefits to ratepayers in the full context of the past and future operations of DEP's coal units. (R. p. 786-6, ll. 3-6).

Commission Finding

According to S.C. Code Ann. § 58-27-810 every rate received by an electrical utility must be just and reasonable. Additionally, S.C. Constitution Article X, § 5 states, "[n]o tax, subsidy or

charge shall be established, fixed, laid or levied, under any pretext whatsoever, without the consent of the people or their representatives lawfully assembled...." S.C Constitution Article IX, § 1 states, "[t]he General Assembly shall provide for appropriate regulation of common carriers, publicly owned utilities, and privately-owned utilities serving the public as and to the extent required by the public interest." According to South Carolina Electric & Gas Company v. Randall, 333 F.Supp.3d 552, 570,

> Even though the South Carolina General Assembly has entrusted the PSC with rate-making power, this grant of power is still subordinate to the General Assembly's rate-making authority. *See Duquesne*, 488 U.S. at 313–14, 109 S.Ct. 609 ("It cannot seriously be contended that the Constitution prevents state legislatures from giving specific instructions to their utility commissions. We have never doubted that state legislatures are competent bodies to set utility rates."); *Glendale Water Corp. of Florence v. City of Florence*, 274 S.C. 472, 265 S.E.2d 41, 42 (1980) (stating the PSC was "creat[ed] by the General Assembly [and] derive[es] all its powers therefrom").

"An administrative agency is generally not bound by the principle of *stare decisis* but it cannot act arbitrarily in failing to follow established precedent." *330 Concord St. Neighborhood Ass'n v. Campsen*, 309 S.C. 514, 424 S.E.2d 538 (Ct. App. 1992) (*See Courtesy Motors Inc. v. Ford Motor Co.*, 384 S.E.2d 118 (Va. Ct. App. 1989)).

Also, "[t]he declaration of an existing practice may not be the substitute for an evaluation of the evidence. A previously adopted policy may not furnish the sole basis for the Commission's action." *See Heater of Seabrook, Inc. v. PSC,* 332 S.C. 20, 26, 503 S.E.2d 739, 742 (1998) (quoting *Hamm v. PSC*, 309 S.C. 282, 289, 422 S.E.2d 110, 114 (1992).

In this proceeding DEP is seeking recovery of CCR expenses incurred from July 2016 through December 2018 related to compliance with Federal and North Carolina requirements.[23] It is apparent that many costs for which DEP seeks recovery in this proceeding result from North Carolina's CAMA and other state actions. ORS witness Wittliff and SCEUC witness O'Donnell testified, and provided evidence to support their claim, that North Carolina's CAMA was brought about by the spill at Dan River. Additionally, this Commission has received evidence that supports the contention that North Carolina's CAMA is more stringent and results in costs in excess of those that would be incurred absent CAMA. It is also clear that while the North Carolina General Assembly has enacted statutes requiring actions that result in increased costs, the South Carolina General Assembly has not at this time.

The North Carolina General Assembly has the authority to create the laws that govern the business conducted in North Carolina; however, to subject South Carolina DEP customers to North Carolina laws which are neither necessary for the provision of power nor which confer benefits to South Carolina ratepayers would be inappropriate. As a result, this Commission will not permit DEP to pass on increased expenses incurred as a result of North Carolina's CAMA.

However, that alone does not end the inquiry. This Commission must determine whether, despite North Carolina's CAMA, it is just and reasonable for DEP to recover coal ash costs incurred that were not incident to CAMA from its South Carolina customers.

This Commission first addresses expenses incurred related to the Robinson Plant, which DEP coordinated with and had approved by the South Carolina Department of Health and

[23] While DEP has sought costs associated with a Consent Agreement, as is discussed below, an agreement is inherently voluntary and thus not a requirement.

Environmental Control ("DHEC"). (R. p. 1115-33, ll. 11-14). DHEC is a state agency with authority to implement and enforce laws and related regulations pursuant to the South Carolina Hazardous Waste Management Act, S.C. Code Ann. § 44-56-10 *et seq.*; the Pollution Control Act, S.C. Code Ann. § 48-1-10 *et seq.*; and the South Carolina Solid Waste Policy and Management Act, S.C. Code Ann. § 44-96-10, *et. seq.* (Hearing Exhibit No. 60, DJW-2 and DJW-3). These Acts authorize the Department to issue orders; assess civil penalties; conduct studies, investigations, and research to abate, control and prevent pollution; and to protect the health of persons or the environment. *Id.* It was pursuant to this authority that DHEC and Duke entered into these Consent Agreements. Because these costs were incurred in compliance with proper consent agreements entered into by a South Carolina agency and in the absence of factors that would otherwise persuade this Commission that these costs should not be recovered, this Commission finds the recovery of these costs just and reasonable.

The Commission is mindful that it must balance the interests of DEP with those of DEP's customers and is concerned about the magnitude of costs DEP seeks to place upon its customers. This Commission understands that North Carolina's CAMA may impose billions of additional costs upon DEP customers. When asked where the costs would end, ORS witness Seaman-Huynh stated, "[i]t ends for ratepayers where this Commission says it ends." (R. p. 1200, ll. 1-3).

Witness Wittliff, testified that he reviewed data provided to him by DEP for two years in reaching his well-reasoned conclusions. (R. p. 1210, ll. 4-8). This Commission had no opportunity to influence the sequence of events that led to DEP now seeking these expenses. The great weight of the testimony causes this Commission to conclude that costs incurred solely as a result of North Carolina's CAMA shall not be recoverable from DEP's South Carolina customers at this time.

Therefore, costs incurred by DEP that result from North Carolina's CAMA, which currently include: $98,220,932 incurred at the Asheville Plant; $33,631,199 incurred at the Cape Fear plant; $9,207,711 incurred at the H.F. Lee Plant; $186,376,226 incurred at the Sutton Plant; and $6,044,240 incurred at the Weatherspoon Plant, this Commission finds that DEP may not recover those costs at this time. This Commission finds that it would not be just and reasonable to impose these costs on DEP's South Carolina customers at this time. As has been the consistent past practice, and as testified to by ORS witness Seaman-Huynh, costs incurred as a direct result of one state's laws, which are specific to that jurisdiction, should be borne by the customers that reside in that jurisdiction. However, as is recommended by ORS witness Wittliff, should laws under which South Carolina DEP ratepayers are governed require additional expenses incurred at a future date, DEP is not prohibited from seeking recovery of those costs at that time.

C. Depreciation Study

ORS's Position

ORS witness Seaman-Huynh testified regarding the Company's depreciation study. (R. p. 1099-2, ll. 12-16). Witness Seaman-Huynh testified that ORS confirmed the Company used the rates from its 2016 depreciation study approved by the Commission in Order No. 2018-530 to determine the appropriate cost levels for depreciation expenses in its current filing. (R. p. 1099-5, ll. 17-19). According to witness Seaman-Huynh, the study results and methodologies are reasonable and consistent with other electric utilities operating in South Carolina and previously approved by the Commission. (R. p. 1099-5, ll. 19-21).

DEP's Position

DEP witness Doss testified regarding DEP's new depreciation rates along with a revised depreciation study. (R. p. 634-9, ll. 4-5). According to witness Doss, DEP is requesting an increase to customer rates at this time based on the revised depreciation rates. (R. p. 634-9, ll. 19-22). Witness Doss testified that DEP commissioned Gannet Fleming Valuation and Rate Consultants, LLC to perform a revised depreciation study as of December 31, 2016, which was included as Doss Exhibit 2. (R. p. 634-10, ll. 1-6). Finally, DEP witness Doss requested that the Commission approve its revised customer rates base on the revised depreciation rates and depreciation study adjustments as shown in Doss Exhibit 3 and Bateman Exhibit 1, page 4b. (R. p. 634-12, ll. 7-9).

Commission Finding

According to S.C. Code Ann. § 58-27-810 every rate received by an electrical utility must be just and reasonable. The Commission finds that the evidence in the record supports a finding that DEP's requested revisions to its depreciation rates is just and reasonable.

D. Cost of Service Study

ORS's Position

Regarding DEP's proposed Cost of Service Study, witness Seaman-Huynh testified that, for purposes of this Application, the methodology applied in constructing the Company's COSS was reasonable. (R. p. 1099-6, ll. 3-4). ORS witness Seaman-Huynh testified regarding the Company's rate design and proposed increase to its BFC. (R. p. 1099-2, ll. 12-16). According to witness Seaman-Huynh, ORS recommends the Commission determine the rate design that balances utility rate design principles. (R. p. 1099-10, ll. 3-5). The magnitude of the increase proposed by DEP to the BFC does not promote a gradual transition to a new rate design. (R. p.

1099-10, ll. 5-6). "Gradualism" is the concept of progressively changing rates over time in a manner that mitigates rate shock to customers. (R. p. 1099-10, ll. 6-8). Increasing the BFC for residential customers by 220% (see Wheeler Exhibit 9 No. 2) in a single rate increase is extreme. (R. p. 1099-10, ll. 8-9). According to witness Seaman-Huynh, in developing electric rates, utilities and utility commissions, including this Commission, have relied upon ten (10) rate design principles from Dr. James C. Bonbright ("Bonbright Principles"). (R. p. 1101-3, ll. 3-5). These principles are:

Revenue-related Attributes:

1. Effectiveness in yielding total revenue requirements under the fair return standard without any socially undesirable expansion of the rate base or socially undesirable level of product quality and safety.

2. Revenue stability and predictability, with a minimum of unexpected changes seriously adverse to utility companies.

3. Stability and predictability of the rates themselves, with a minimum of unexpected changes seriously adverse to ratepayers and with a sense of historical continuity. (Compare "The best tax is an old tax.")

Cost-related Attributes:

4. Static efficiency of the rate classes and rate blocks in discouraging wasteful use of service while promoting all justified types and amounts of use:

a. In the control of the total amounts of service supplied by the company,

b. In the control of the relative uses of alternative types of service by ratepayers (on-peak versus off-peak service or higher quality versus lower quality service).

5. Reflection of all of the present and future private and social costs and benefits occasioned by a service's provision (i.e., all internalities and externalities).

6. Fairness of the specific rates in the apportionment of the total costs of service among the different ratepayers so as to avoid arbitrariness and capriciousness and to attain equity in three dimensions: (1) horizontal (i.e., equals treated equally); (2) vertical (i.e., unequals treated unequally); and (3) anonymous (i.e., no ratepayer's demands can be diverted away uneconomically from an incumbent by a potential entrant).

7. Avoidance of undue discrimination in rate relationships so as to be, if possible, compensatory (i.e., subsidy free with no intercustomer burdens).

8. Dynamic efficiency in promoting innovation and responding economically to changing demand and supply patterns.

Practical-related Attributes:

9. The related, practical attributes of simplicity, certainty, convenience of payment, economy in collection, understandability, public acceptability, and feasibility of application.

10. Freedom from controversies as to proper interpretation.

(R. pp. 1101-3, 4).

According to witness Seaman-Huynh, the Company's proposal falls short of Bonbright attributes 3, 4, 8, and 9. (R. p. 1101-4, ll. 10-12). Additionally, the impact to customers using relatively small amounts of energy (e.g., low income and fixed income customers) would be

substantial. (R. p. 1099-10, ll. 9-11). As a result, ORS proposed a methodology that would allow DEP to increase the BFCs for the residential class to recover up to twenty-five percent (25%) of the approved revenue increase assigned to the residential class. (R. p. 1099-10, ll. 12-14). This approach of gradualism mirrors the approach used by the North Carolina Public Utilities Commission in the most recent DEP general rate proceeding. (R. p. 1099-10, ll. 14-15). ORS witness Seaman-Huynh testified to the same methodology for determining the BFC for the Small General Service and Small General Service Constant Load customer classes, as well. (R. p. 1099-12, ll. 8-10). According to witness Seaman-Huynh, when deriving its methodology, ORS looked to the recently litigated rate proceedings that occurred between DEP and the North Carolina Public Utility Commission. (R. p. 1189, ll. 11-20). Witness Seaman-Huynh testified that North Carolina Public Staff recommended using 25% of the additional revenue requirement go towards the BFC and ORS reviewed the corresponding analysis. (R. p. 1190, ll. 1-5).

Upon hearing the testimony from public witnesses at the night hearing, ORS modified its position regarding the BFC such that it supported a lower BFC for the medium-general service and Seasonal and Intermittent ("S&I") customer classes, as well. According to witness Seaman-Huynh, following the night hearings held in Florence and Sumter, ORS received inquiries and calls from the agricultural community expressing concern over the requested increase. (R. p. 1096, ll. 7-10). Based on the testimony at the night hearings and these contacts, ORS supports the Farm Bureau's request to limit the increase to medium general service ("MGS") BFC to an increase similar to that of the small general service BFC. (R. p. 1096, ll. 10-15). Based on ORS's adjustments, a 24.5 percent increase, as recommended by the Farm Bureau, would result in a $21.38 BFC for the medium general service class. (R. p. 1096, ll. 15-19). Witness Seaman-Huynh

also recommended, that as DEP had proposed, the BFCs for the S&I schedules match that of the MGS. (R. p. 1099-15, ll. 1-3).

ORS witness Dr. Ruoff testified regarding the Company's proposed increase to the BFC. According to Dr. Ruoff, company witness Wheeler portrays the increase as intended "to reflect full cost recovery of the customer component identified in the unit cost study" and "to minimize subsidization of customers within the rate class." (Wheeler Rebuttal Testimony, pp. 3-4.). (R. p. 1061-4, ll. 3-6). According to Dr. Ruoff, the Company sought to characterize this shift as simply an intra-class shift from high users to low users. (R. p. 1061-4, ll. 6-7). However, Dr. Ruoff testified that front-loading customer costs also shifts the revenue risks of lowered load growth, improved weatherization and efficiencies in heating and air conditioning and appliances, distributed generation expansion, and battery storage expansion from the Company onto customers. (R. p. 1061-4, ll. 7-10).

According to Dr. Ruoff, company witness Ghartey-Tagoe suggests that this shift mostly affects "low usage customers, such as people with vacation homes or people with second homes elsewhere in the state of South Carolina." (R. p. 1061-4, ll. 11-13). However, witness Wheeler presents clear evidence in his chart "# of DEP Low Income Bills by Usage Level (Household Income < $30,000)," that most low-income customers, including low-income seniors and renters, are low usage customers. (R. p. 1061-4, ll. 13-16). According to Dr. Ruoff, this risk shift falls on all but the higher use customers, but most heavily on low income customers—those who are least able to afford this increase and for whom the increase most threatens their ability to:

1. Pay rent or mortgages in decent, safe and affordable housing;

2. Ensure that those homes are not dark, cold or hot, even life-threateningly so;

3. Buy sufficient, healthy food;

4. Afford and maintain reliable transportation; and

5. Pay for all needed prescriptions and health care.

(R. p. 1061-4, ll. 21-23, p. 1061-5, ll. 1-4).

DEP's Position

According to witness Hager, the National Association of Regulatory Utility Commissioners ("NARUC") Electric Utility Cost Allocation Manual ("CAM") states that a portion of distribution costs related to FERC Accounts 364-368 are customer-related. (R. p. 701-13, ll. 4-6.) The two-methods the CAM discusses for allocating these customer-related distribution costs are: 1) Minimum System Method (called Minimum-Size Method in the NARUC Manual); and 2) Zero-Intercept Method (called Minimum-Intercept Method in the NARUC Manual). (R. p. 701-13, ll. 9-13). Witness Hager testified that DEP incorporated the concept of Minimum System into its COSS for allocating costs to customers, which is appropriate for allocation of customer-related distribution costs. (R. p. 701-14, ll. 4-6). DEP's Minimum System Study allowed it to classify the distribution system into the portion that is customer-related (driven by number of customers) and the portion that is demand-related (driven by customer peak demand levels). (R. p. 701-14, ll. 11-14). Every customer requires some minimum amount of wires, poles, transformers, etc. just to receive service; therefore, every customer "caused" DEP to install some amount of such distribution assets. (R. p. 701-14, ll. 14-16). According to witness Hager, if a customer had no demand for electricity, they wouldn't be connected to the grid. (R. p. 696, ll. 2-4). The concept DEP used to develop its Minimum System Study was to consider what distribution assets would be required if every customer had only some minimum level of usage (e.g., 1 light bulb). (R. p.

701-14, ll. 16-19). This methodology allows the utility to assess how much of its distribution system is installed simply to ensure that electricity can be delivered to each customer, if and when the customer chooses to use electricity. (R. p. 701-14, ll. 19-22).

Witness Wheeler testified that DEP's proposed rates must be set to achieve the necessary total revenue requirement and reflect the cost of service within the five major rate classes: residential, small general service, medium general service, large general service, and various outdoor lighting schedules. (R. p. 709-8, ll. 16-19). Witness Wheeler testified that DEP conducted a unit cost study and it indicated it was appropriate to raise the monthly Basic Facilities Charge to better reflect all customer-related costs and failing to do so would result in customer cross-subsidization. (R. p. 709-8, ll. 22-23, p. 709-9, l. 1). Accordingly, DEP originally proposed to increase the Basic Facilities Charge in schedule RES from $9.06 to $29.00; from $9.91 to $29.00 for all Small General Service schedules; to $29.00 for the SGS Constant Load rate class; from $17.17 to $40.03 for Medium General Service schedules; from $23.17 to $46.53 for SGS-TOU; to $46.53 for SGS-TES; to $40.03 for CSE and CSG; from $98.00 to $195.00 for Large General Service; to $40.03 for sports field lighting service rate class and the S&I service rate class, to match the Medium General Service schedule; and to $29.00 for traffic signal rate class to match the SGS basic facilities charge. (R. pp. 709-14-709-35). In his surrebuttal testimony, DEP witness Wheeler testified that the Company understands the concern with a large increase to the BFC for residential customers, as a result, witness Wheeler offered an alternative to what he originally proposed. (R. p. 711-10, ll. 6-13). According to witness Wheeler, a possible approach would be what was offered by the Company in its recent North Carolina rate case where the increase in the Basic Facilities Charge rate was set equal to 50% of the difference between the current rate and the cost basis,

which would reduce the proposed BFC to $19.03. (R. p. 711-10, ll. 16-21). Subsequent to the filing of DEP witness Wheeler's rebuttal testimony, on March 26, 2019, counsel for DEP filed a letter stating,

> [DEP] would like to notify the Commission and parties that based upon the Company's review of the surrebuttal testimony of ORS Witness Michael Seaman-Huynh and testimony heard at the public hearings, the Company does not contest the [BFC] proposed by ORS in Witness Seaman-Huynh's surrebuttal testimony as follows: BFCs of $11.78 for residential customers, $12.34 for SGS customers, and $11.31 for SGS Constant Load customers, and to put the remaining revenue requirement ultimately determined by the Commission in the variable component of such rates.

(*See also* R. p. 296, ll. 17-25).

NAACP et al. Position

Witness Howat testified that increasing fixed charges causes disproportionate impacts to low volume, low-income customers, and high fixed charges send the wrong price signals to customers, discouraging energy efficiency and undermining the incentive to change usage patterns so that increased investment in high-cost generation can be avoided. (R. p. 279-8, ll. 8-12). According to witness Howat, because a BFC is fixed and must be paid each month by customers whether or not they so much as touch a light switch, they undermine the ability of cash-strapped consumers to take control over their electricity bills. (R. p. 279-8, ll. 13-15). Additionally, witness Howat testified that the Company's proposal to increase total monthly residential fixed charges to nearly $29 represents an extreme outlier among IOUs operating in the U.S. (R. p. 279-9, ll. 7-9). Witness Howat also testified that DEP's proposal would result in an extreme intra-class cost shift that would disproportionately harm low-income, elderly, and African-American ratepayers, who on average use less electricity than their counterparts in nearly every region of the country. (R. p. 279-10, ll. 16-18).

Witness Wallach testified that DEP has not justified its proposal to more than triple the residential BFC. (R. p. 254-4, ll. 22-23). According to witness Wallach, DEP has classified a portion of the cost of its distribution grid as customer-related in the COSS based on a "minimum-system" analysis. (R. p. 254-5, ll. 2-4). Witness Wallach testified that the minimum system method is flawed because it erroneously classifies some distribution grid costs—a portion of the cost of poles, wires, conduits, and transformers—as customer-related, even though they are in fact driven by usage and therefore properly classified as "demand-related," which results in an overstatement of customer-related costs appropriately recovered through the BFC. (R. p. 254-5, ll. 5-10). Witness Wallach recommended that DEP should classify all such distribution-grid costs as demand-related. (R. p. 254-5, ll. 13-15);

Additionally, witness Wallach cited a 1988 Commission order granting a rate increase to DEP's predecessor, Carolina Power & Light Company ("CP&L"), in which this Commission rejected an intervenor's recommendation that CP&L use the minimum-system method to classify distribution costs.[24] (R. p. 254-5, n. 2).

Finally, witness Wallach testified that the Company's proposal to recover usage-driven costs through the residential BFC would:

- Lead to subsidization of high-usage residential customers' costs by low-usage customers, and thereby inequitably increase bills for the Company's low-usage residential customers; and

- Dampen price signals to consumers for controlling their bills through conservation, energy efficiency, or distributed renewable generation. (R. p. 254-6, ll. 1-8).

[24] Order No. 88-864, Docket No. 88-11-E, 11 (August 29, 1988).

Accordingly, witness Wallach recommended that the monthly BFC be set at $9.23 per residential customer to reflect the cost to connect a residential customer. (R. p. 254-6, ll. 10-12).

Vote Solar's Position

According to witness Barnes, DEP's originally proposed charge for Schedule RES would result in the highest fixed monthly charges placed on residential customers of any investor-owned utility ("IOU") in the country by a significant margin ($4.00/month higher than the current highest charge of $25.00/month). (R. p. 779-12, ll. 11-14). When discussing the Bonbright principle of gradualism and an objective approach, witness Barnes testified that gradualism is often practiced by relating fixed charge increases to the adopted percentage increase in class revenue. (R. p. 779-17, ll. 3-4). In this case, the Company's proposed residential class base revenue increase is roughly 14.0%. (R. p. 779-17, ll. 4-5). Such an approach is also objective because it stems from hard numbers rather than subjective judgments. (R. p. 779-17, ll. 7-8).

Finally, witness Barnes recommends that his calculation of $9.23 be the maximum residential customer charge based on eliminating the Minimum System Method and excluding two other cost components classified as customer-related in the Company's cost of service study. (R. p. 779-41, ll. 12-15).

Night Hearing Testimony

At the Florence night hearing, approximately twenty-seven customers testified on various issues including the DEP proposed BFC rates. At the Sumter night hearing, approximately eighteen customers testified on similar issues.

Public witnesses at the night hearings consistently testified that the BFC rates as proposed by DEP were too high. Among those testifying as to the harm that would be caused if the Commission granted DEP's proposed BFC rate were several farmers and representatives of the agribusiness community. Several members of the agricultural community testified that the rate proposed on top of the current difficulties facing the farming community would have a negative impact on farmers, with some voicing specific concern over the impacts on farmers on the MGS rate. For example, Mr. Anthony Ward, a farmer, testified that with floods, hurricanes, and rainfall, accompanied by 133 percent rate increase for those meters that are attached to irrigation pivots, he cannot make it. Many others testified similarly.

Commission Finding

According to S.C. Code Ann. § 58-27-810 every rate received by an electrical utility must be just and reasonable.

"An administrative agency is generally not bound by the principle of *stare decisis* but it cannot act arbitrarily in failing to follow established precedent." *330 Concord St. Neighborhood Ass'n v. Campsen*, 309 S.C. 514, 424 S.E.2d 538 (Ct. App. 1992) (*See Courtesy Motors Inc. v. Ford Motor Co.*, 384 S.E.2d 118 (Va. Ct. App. 1989)).

Also, "[t]he declaration of an existing practice may not be the substitute for an evaluation of the evidence. A previously adopted policy may not furnish the sole basis for the Commission's action." *See Heater of Seabrook, Inc. v. PSC,* 332 S.C. 20, 26, 503 S.E.2d 739, 742 (1998) (quoting *Hamm v. PSC*, 309 S.C. 282, 289, 422 S.E.2d 110, 114 (1992).

In considering the reasonableness of the Company's Cost of Service Study, this Commission must review two issues: whether the Minimum System Method is appropriate for determining the

cost of service; and, if so, whether other concerns require a departure from the BFC charges resulting from the Minimum System Method.

The parties appearing before the Commission presented opposing views on the use of the Minimum System Method. While DEP contends that the Minimum System Method has been approved for use by NARUC as an acceptable method of allocating customer related distribution costs, and ORS does not contest its use in this proceeding, other witnesses contend it is flawed and cite to a previous Commission Order in which the Minimum System Method was rejected. This Commission, however, need not reach that question because no party objected to the specific BFC increases eventually proposed by ORS and accepted by the Company. This Commission need not rule on uncontested issues, and therefore will not here address the appropriateness or inappropriateness of the Minimum System Method in future cases.

In further support that the agreement reached results in an appropriate BFC to pass on to DEP's customers, numerous parties testified regarding the principles espoused by Dr. Bonbright, including the principle of gradualism. The Company acknowledged the need for gradualism in DEP witness Wheeler's rebuttal testimony. (R. p. 711-10, ll. 6-13). Similarly, when discussing the BFC under cross examination, DEP witness Ghartey-Tagoe stated, "I should have been more intentional about moving towards the appropriate [BFC] in a more gradual manner." (R. p. 350, ll. 18-20). If the increase as proposed by DEP were approved, it would limit the customer's ability to effectively reduce their monthly bills by reducing the amount of electricity used. Additionally, rates passed onto DEP's customers must not be unduly burdensome, which DEP's proposed BFC would surely be. Notwithstanding, this Commission is cognizant of the subjectivity inherent in taking a gradual approach to an increase in the BFC. Witness Barnes discussed an objective

manner by which a party can employ Bonbright's principle of gradualism. (R. p. 779-16, ll. 17-22, p. 779-17, ll. 1-8). In the same manner testified to by witness Barnes, witness Seaman-Huynh, presented for this Commission's consideration an objective methodology, which this Commission could employ and achieve the goal of gradualism. (R. p. 1099-10, ll. 12-17, p. 1099-12, ll. 8-15, and p. 1099-15, ll. 14-18). Finally, DEP submitted a letter in which it sought to employ witness Seaman-Huynh's objective methodology combined with the testimony given at the public night hearings and stated that it did not contest a BFC of $11.78 for residential customers, $12.34 for SGS customers, and $11.31 for SGS Constant Load customers. (*See Also* R. p. 296, ll. 17-25).

Based upon the evidence, this Commission finds that the following rates to charge DEP customers for BFCs are just and reasonable: $11.78 for residential customers; $12.34 for SGS customers; and $11.31 for SGS Constant Load customers. For MGS and S&I customers, we instruct the Company to limit the increase to the BFC to be no greater than the average percentage increase of the SGS and SGS Constant Load customers. These figures are supported in the record by testimony of ORS and DEP witnesses and are derived from an objective methodology that achieves the goal of gradualism, which was supported by the testimony of witness Barnes.

E. Proposed Changes to Differentials in Energy and Demand

ORS's Position

Regarding the changes to the differentials in energy and demand charges proposed by Company witness Wheeler, ORS witness Seaman-Huynh recommends the Commission reject the proposed changes. (R. p. 1099-10, ll. 18-20). According to witness Seaman-Huynh, DEP states it is in the process of deploying its AMI program in its South Carolina territory. (R. p. 1099-10, ll. 20-21). DEP intends to use customer usage data gathered from the AMI program to develop and

offer new rates to its customers in the future. (R. p. 1099-10, ll. 21-22, p. 1099-11, l. 1). According to witness Seaman-Huynh, if the Company were to begin making changes to its rate designs regarding relationships between on-peak and off-peak and seasonal energy and demand charges, customers may respond and change their usage patterns. (R. p. 1101-7, ll. 5-7). Then, when the Company incorporates the information available from AMI and Customer Connect and offers customers new rate designs in a year or two, customers, who have adapted their usage, may be confused and frustrated. (R. p. 1101-7, ll. 7-10). Witness Seaman-Huynh testified that it is, therefore, premature to make the changes described by Company witness Wheeler. (R. p. 1099-11, ll. 1-2). According to witness Seaman-Huynh, the Company should incorporate the additional data gathered from the AMI program into any requests to change the differential between energy and demand charges, and the information from the AMI program should be analyzed by the Company, along with demand side management and energy efficiency ("DSM/EE") and other programs, to develop sustainable rate structures and rate designs based on customer's usage patterns. (R. p. 1099-11, ll. 2-6).

DEP's Position

According to DEP witness Wheeler, the Company has recommended several changes to its time-of-use and other rate designs to reduce the emphasis on summer pricing, to better reflect current marginal cost relationships and to better reflect cost causation. (R. p. 711-12, ll. 15-17). According to witness Wheeler, while the Company understands ORS's position attempts to maintain current designs and minimizes disproportionate bill impacts for customers served under each schedule, the Company's changes are not dependent upon alignment with a future rate design but are intended to reflect current non-disputed cost trends. (R. p. 711-13, ll. 3-7). Witness

Wheeler testified that continuing with the current rate emphasis encouraging winter load is contrary to the Company's adoption of a winter planning criteria for resource planning purposes. (R. p. 711-13, ll. 7-9). According to witness Wheeler, the Company's recommended changes, which the ORS rejects, include:

1. Under Residential Service Schedule RES, the ORS recommends retaining the current one cent per kWh declining block rate in the non-summer months. The Company recommends reducing it to 0.5 cents per kWh to reflect its current winter peak planning criteria since winter load additions, not summer, now primarily influence generation resource additions. Consequently, higher rates should apply in the winter months to more properly price the impact of winter peak load additions. Further reduction in the current summer pricing emphasis should be considered in future rate cases.

2. Under Residential Service Time-of-Use Schedule R-TOUD, the ORS recommends retaining the current price relationships between summer and non-summer demand rates and on-peak and off-peak energy rates. The Company's proposed design reduces the difference between summer and non-summer demand rates to start to shift the price emphasis toward winter demands that drive generation additions and reduces the difference between on-peak and off-peak energy rates to reflect the narrowing of the difference in current on-peak and off-peak marginal energy costs.

3. Under Small General Service Time-of-Use Schedule SGS-TOU, the ORS recommends retaining the current price relationships between summer and non-summer demand rates and on-peak and off-peak energy rates. For the same reasons cited above for Schedule R-TOUD, the Company's proposed design reduces the difference between summer and non-summer demand rates and reduces the difference between on-peak and off-peak energy rates.

4. Under Schedule SGS-TOU and Large General Service Time-of-Use Schedule LGS-TOU, the ORS is recommending that the off-peak excess demand charge be increased by the same percentage as other rates under the schedule. The off-peak excess demand charge applies to the customer's highest demand registered during off-peak hours to the extent it exceeds the on-peak demand in the billing month. It is priced to recover distribution-related costs to ensure that customers pay their fair share of costs for extending lines and circuits to their premises. The recommended rate is set to match the distribution-related unit cost from functionalized cost of service study. The billing rate should be set to match the unit cost to avoid subsidization within the rate class.

5. Under Schedule LGS-TOU, the ORS is recommending that the on-peak demand charges be increased by the same percentage as the energy rates, rather than only increasing the demand rates by 50% of the energy rate change. Unlike recommended changes to the other time-of-use schedules, the Company doesn't recommend changes to the summer/non-summer demand rate relationship or on peak/off-peak price relationships to avoid disproportionate increases on these large customers but does recommend that the demand rates be increased less than other rates. The current demand rates substantially exceed marginal capacity costs and therefore fail to provide ideal price signals, overly stating the benefit realized by shedding load at the customer's peak (R. pp. 711-13 through 711-15).

Commission Finding

Witnesses for ORS and DEP offered opposing testimony on whether the Commission should accept the Company's proposal to make changes as listed above. However, it is clear the DEP plans to continue deploying its AMI program in South Carolina and that this AMI will enable

the Company to gather usage data from its customers. While this Commission understands the Company's position, the Company has alleged no harm that will come of delaying the change to the differential between energy and demand charges, such as requested in this proceeding. However, ORS witness Seaman-Huynh has presented evidence that a change at this juncture, before additional data gathered from AMI can be utilized to tailor a requested change, could harm DEP's customers. This Commission therefore finds the request to be premature and denies DEP's request to change the differential in between energy and demand charges at this time. Once additional data from AMI has been gathered, DEP may seek the requested change from this Commission.

F. Litigation Expenses (Adjustment #36)

ORS's Position

ORS recommends limiting recovery of legal expenses to only incurred costs that are supported by sufficient supporting documentation to show the legal expenses are approved regulatory expenses that are properly recoverable through rates. (*See* Tr. p. 1383 ("[W]e [ORS] got a cover sheet [of legal expenses]. We didn't get any information as to the services rendered . . . behind the numbers.") ORS asserts that DEP seeks recovery of legal expenses that are not related to providing adequate electrical service to customers and from which customers derived no benefit. (Tr. p. 1317) These legal costs should be the shareholders' responsibility, which incentivizes the regulated utilities to operate in compliance with federal, state and local laws. (Tr. p. 1317.) ORS asserts that the justifications provided by the Company for the legal expenses at-issue "do not address the reason the expenses were incurred initially[,]" and that, overall, the Company failed to provide "the substantial evidence required by decisions issued by the South Carolina Supreme Court" to recover expenses that are properly challenged. (*See* Tr. p. 1309.)

ORS also opposes recovery of legal expenses related to ongoing litigation as premature. Because generally recovery of litigation expenses "in legal disputes in which the company was found at fault" should be disallowed, it would be premature to grant recovery of litigation expenses related to ongoing litigation. (*See* Tr. p. 1310-3.) ORS asserts that there is insufficient information at this time to determine whether these expenses are incurred reasonably or whether they result from a violation of the law or otherwise imprudent management conduct.

DEP's Position

"[A]s a general matter," DEP asserts that "legal fees should be recoverable because they represent a legitimate, reasonable, and prudent business expenditure and, absent a finding that a specific legal expense was imprudent or unreasonable, these expenses should be recoverable." (Tr. p. 839-28.) DEP is not seeking legal expenses "associated with fines or penalties related to environmental violations." (Tr. p. 834.) DEP does seek recovery of all legal expenses relating to "ongoing litigation" so long as to-date "there has been no finding of environmental violations" in those matters. (Tr. p. 834.)

DEP asserts that the ongoing insurance litigation was initiated by the Company for the benefit of its customers to enforce insurance policies and obtain indemnity from insurers for costs incurred associated with coal ash remediation. (Tr. p. 839-29.) The Company claims that any costs it recoups from its insurers will be passed along to benefit its customers. (Tr. p. 839-29.) Further, the Company asserts that "it is reasonable to expect the Company to defend itself and ratepayers from the potential for expensive and unnecessary legal rulings and, in appropriate instances, settling lawsuits." (Tr. p. 839-30.)

At the hearing, DEP offered what it represented to be supplemental responses to the ORS AIR's on coal ash litigation expenses, which DEP produced to ORS on April 3, 2019 and April 7, 2019. (Tr. pp. 1349-50.)

Commission Finding

According to S.C. Code Ann. § 58-27-810 every rate received by an electrical utility must be just and reasonable. In *Utilities Services of S.C.*, the Court stated the following with respect to the presumption and burden to be applied to a utility's expenditures:

> Utility is correct that it was entitled to a presumption that its expenditures were reasonable and incurred in good faith, and therefore, a showing that its expenses had increased since its last rate case could satisfy its burden of proof. Nevertheless, the presumption in a utility's favor clearly does not foreclose scrutiny and a challenge. In those circumstances, the burden remains on the utility to demonstrate the reasonableness of its costs. It seems to us that Utility wants the presumption of reasonableness to be dispositive. In Hamm, 309 S.C. at 286-87, 422 S.E.2d at 112-13, we stated: Although the burden of proof of the reasonableness of all costs incurred which enter into a rate increase request rests with the utility, the utility's expenses are presumed to be reasonable and incurred in good faith. This presumption does not shift the burden of persuasion but shifts the burden of production on to the Commission or other contesting party to demonstrate a tenable basis for raising the specter of imprudence. This evidence may be provided . . . through the Commission's broad investigatory powers. **The ultimate burden of showing every reasonable effort to minimize . . . costs remains on the utility**. (emphasis added)

Utils. Servs. of S.C., 392 S.C. at 109-10, 708 S.E.2d at 762-63 (citing *Hamm v. S.C. Pub. Serv. Comm'n*, 309 S.C. 282, 286-287, 422 S.E.2d 110, 112-113 (1992)).

"If an investigation initiated by ORS or by the PSC yields evidence that overcomes the presumption of reasonableness, a utility must further substantiate its claimed expenditures." *Utils. Servs. of S.C.*, 392 S.C. at 110, 708 S.E.2d at 763.

A presumption of reasonableness, therefore, applies to expenses for which a utility seeks recovery from ratepayers until another party demonstrates a "tenable basis for raising the specter of imprudence." *Utils. Servs. of S.C.*, 392 S.C. at 109-110, 708 S.E.2d at 762-63. Once this occurs, the burden is on the utility to show that it made every reasonable effort to minimize costs and substantiate its claimed expenses. *Id.*

Finally, as this Commission has done previously, we look to *State ex. rel. Utilities Comm'n v. Pub. Staff, N. Carolina Utilities Comm'n*, 317 N.C. 26, 343 S.E.2d 898 (1986), for guidance. In that case, the North Carolina Supreme Court reversed a decision by the North Carolina Utilities Commission that allowed inclusion of utility legal fees in approved operating expenses resulting from the utility contesting a penalty that had been assessed for failure to provide adequate service. The North Carolina Supreme Court noted that the legal fees in question were not associated with the utility's provision of water service but were a result of the utility's failure to provide adequate water services in the first place. The North Carolina Supreme Court concluded it would be improper to require ratepayers to pay for the utility's penalty-related legal fees through inclusion in the utility's regulated expenses.

The issue of DEP mismanagement associated with its current coal ash legal expense reimbursement request is rooted in ORS concerns about the February 2014 Dan River coal ash discharge disaster in North Carolina involving 39,000 tons of coal ash flow into the Dan River after the DEP containment pond storm drainage pipe failed. (Tr. p. 1359.) Because of DEP management failure, DEP pled guilty to criminal negligence in North Carolina. "Criminal negligence" in North Carolina is defined as "recklessness or carelessness that shows a thoughtless disregard of consequences or a heedless indifference to the safety and rights of others." *State v.*

Jones, 353 N.C. 159, 165, 538 S.E.2d 917, 923 (2000). ORS seeks to prevent DEP from charging its customers with any legal costs or expenses flowing from or related to its guilty pleading of criminal negligence.

Months before the start of the DEP rate case before the Commission, ORS staff were seeking to review and examine the coal ash legal expense evidence that DEP claimed justified its contested coal ash related legal expenses in the amount of $389,995 should be included in customer rates. (*See* Tr. 1310-5, -7; Ex. 67.) During discovery, ORS requested the underlying invoices, billings and records and explanations that DEP claimed support DEP's argument that all coal ash legal costs and expenses should be included in customer utility rates. While DEP may be entitled to a presumption of reasonableness, once challenged, DEP has the burden of proof to substantiate the expense for which it seeks recovery by identifying, collecting, presenting and explaining the DEP coal ash legal expense evidence it introduced into the hearing record.

DEP was on notice in late 2018 that ORS was seeking discovery and substantial evidence supporting its rate case claim that all DEP coal ash legal expenses were reasonable and should be paid by DEP customers in their utility rates. During the rate hearing, ORS witnesses Morgan and Hamm testified that the company failed to provide the Commission with substantial factual and other related evidence required for the Commission to approve that those expenses be included in DEP customer rates. The evidence of record is sufficient to raise the "specter of imprudence" as to the origins of the litigation expenses that DEP seeks to recover in this case. *See Utils. Servs. of S.C.*, 392 S.C. at 109-110, 708 S.E.2d at 762-63

No DEP witness was offered before the Commission to present and explain the individual line-item legal and expense summary and dollar amounts listed in the computer print outs provided

by DEP to ORS in discovery. The Record reflects that DEP made no effort to explain or justify the additional legal expense printouts presented on the last day of the DEP hearing. (*See* Ex. 71.) Just as important, DEP made no effort to present evidence confirming which case or dispute was associated with each individual dollar amount entry on the new computer printouts. DEP failed to meet its burden of proof by substantiating the expenses for which it sought recovery to the Commission. Without establishing the evidentiary basis needed to cause the Commission to include the challenged DEP legal expenses in customer rates, the Commission has no record evidence basis to approve those contested coal ash expenses in rates in this proceeding.

A brief review of the coal ash legal summary information provided to ORS in discovery reveals that DEP seeks to require its customers to defend law suits filed by the state of North Carolina against DEP. (*See* Ex. 67 (DEP ORS 42-1: "Defense of coal ash state enforcement litigation").) DEP made no efforts to explain to the Commission why its customers should be responsible for paying any legal cost or expense related to coal ash discharges when DEP earlier plead guilty to criminal negligence in mishandling its coal ash management responsibilities at Dan River. (*See* Tr. p. 1359.)

Additionally, Order No. 2018-802, provides clear guidance in this situation. "[R]atepayers should not be responsible for the payment of litigation expenses incurred" where "the ratepayers derived no benefit from the expenditures." (Order No. 2018-802 at p.18.) But as we have recognized, where the "litigation was a smart strategic effort" the expenses may be recoverable even if the effort is ultimately unsuccessful. The Company bears the burden of showing that the legal action was a genuine value-adding proposition that did not arise out of imprudent conduct by the utility. Thus, an expense can "not be considered reasonable or necessary" where "the utility

could have avoided the expense" by fulfilling its obligations as a regulated utility. (Order No. 2018-802 at p. 19 (citing *State ex rel. Utilities Comm'n v. Pub. Staff, NCUC*,317 N.C. 26, 41, 343 S.E2d 898, 907-08 (1986)).

DEP claims that the presumption of reasonableness is sufficient to support Commission approval of its contested legal expenses. The South Carolina Supreme Court made clear that the presumption of reasonableness does not shift the burden of persuasion. "[T]he ultimate burden of showing every reasonable effort to minimize costs remains on the utility." *Utils. Servs. of S.C.*, 392 S.C. at 110, 708 S.E.2d at 762–64.

An examination of the DEP responses to ORS legal expense discovery filings merely reflect a series of dollar amounts without any reference to the specific litigation matter prompting the litigation expense in the first place. DEP failed to provide the Commission with any basis to support a claim that customers are responsible reimbursing DEP since the data provided by DEP is devoid of any case specific identifying data. DEP must substantiate the expenses for which it seeks recovery, and DEP has failed to do so. As a result, this Commission finds that DEP may not recover the associated legal expenses for which it seeks recovery. In addition, we note that expenses related to the CertainTEED Gypsum NC, Inc. litigation are also included in litigation expenses addressed by Adjustment 36. (*See* Tr. pp. 1310-8, -9.) For the reasons discussed in the next section of this Order, we conclude that DEP may not recover $389,995 Coal Ash Litigation Expenses.

G. Payment Obligations to CertainTEED Gypsum, NC Inc. (Adjustment #38)

ORS's Position

ORS asserts that DEP should not be allowed to recover a total of approximately $90 million to be paid by DEP to CertainTEED as a penalty and liquidated damages following unsuccessful litigation. (Tr. pp. 1317-18; *see also* Tr. p. 1306.) Allowing the payment obligations as an allowable expense forces ratepayer to pay for DEP's failure to comply with the terms of an agreement that it negotiated, drafted, and made a business decision to breach. (*See* Tr. pp. 1319-5, -6, -7; *see also* Tr. p. 1306.) Furthermore, the ongoing payment obligations are not related to providing adequate electrical service to customers and the customers derived no benefit from the expenditure. (Tr. pp. 1317-18.) While ORS does not dispute the prudency of the underlying contract, it asserts that the contract itself and the decision to breach that contract and the attendant consequences should be assessed separately. (*See* Tr. pp. 1324-4, -5; 1376.) ORS asserts "that the Company should not be able to insulate its shareholders" from management decisions "by externalizing costs to customers" related to management failures. (*See* Tr. pp. 1310-10, -11.)

DEP's Position

DEP argues that the series of contracts between DEP and CertainTEED provided a net benefit to customers despite the cost of the 2018 settlement. (Coppola Summ.) DEP does not accede that it did in fact breach the contract. (Coppola Summ.) DEP asserts that the contracts with CertainTEED were related to providing adequate electrical service to customers because the Company would never have entered into a contract to sell gypsum "but for the power plants that provide electric power to customers" that produce gypsum. (Coppola Summ.) DEP asserts that because customers benefitted overall from the contracts between DEP and CertainTEED that it is

reasonable for customers to bear the entire $90 million cost of the settlement. (*See* Coppola Summ.; Coppola cross-examination by ORS.)

Commission Finding

The Commission concludes that the most instructive evidence of record on whether DEP's payment obligations to CertainTEED are allowable expenses is provided by the Opinion and Final Judgment issued by the North Carolina Business Court in the litigation between DEP and CertainTEED. (*See* Ex. 67, WJM-2.) The Opinion and Final Judgment shows that DEP elected to breach a contract and then failed to successfully defend the claim filed by CertainTEED in the ensuing litigation. DEP now requests the Commission require customers to pay for the costs of this adverse management decision.

In considering this issue, the Commission is mindful that it must balance the interests of the utility with those of the ratepayer. DEP seeks recovery of expenses for an action in a court in which it was not successful. We find that ratepayers should not be responsible for the payment of litigation expenses incurred in defending an action in which the ratepayers derived no benefit from the expenditures. DEP was found to have failed to comply with its agreement and "failed to carry its burden of proof on its defenses." (*See* Ex. 67, WJM-2 at ¶237.) This showing, coupled with the magnitude of DEP's payment obligation of $90 million, clearly raises concerns. *See Utils. Servs. of S.C.*, 392 S.C. at 109-110, 708 S.E.2d at 762-63. The Company asserts that a series of contractual relationship between DEP and CertainTEED provided a net benefit to customers, (*see* Coppola Rebuttal pp. 2-3), but has produced no corresponding evidence to show that the decision to breach and the resulting $90 million payment obligation was in the interest of customers. On the record before us, this Commission finds this obligation should not be charged to ratepayers.

H. Removal of Certain Expenses for Awards and Miscellaneous Items (Adjustment #36)

ORS's Position

ORS asserts that its recommended Adjustment #36 removes well-recognized non-allowable expenses not directly related to providing safe and reliable electric service to customers O&M expenses such as "incentive awards, safety and length-of-service awards, miscellaneous gift awards, and parties." (*See* Tr. p. 1233-34.) Subsequent to its raised and reasonable challenge, DEP had the opportunity to provide supplemental information and analysis to support recovery of those expenses ORS concluded were non-allowable. (Tr. p. 1233.) ORS asserts that the Commission's regulatory policy position on these types of expenses is clearly stated in previous Commission Orders, including Order Nos. 91-595, 94-1229, 01-887, and 02-285. (Tr. pp. 1238-11, -12.) ORS believes it is more appropriate for DEP's shareholders to bear the burden of these types of expenses which have, at most, an attenuated relationship to providing low-cost and reliable electric service to customers. (*See* Tr. pp. 1238-11, -12.)

During the hearing as part of the Non-allowables Stipulation the ORS agreed that it would no longer contest $26,231 in costs related to the Lineman's Rodeo, $4,066 in costs for allocations not 100% related to South Carolina, $12,366 related to accruals and timing differences and half of the $31,655 in costs for service/safety awards. (Tr. Vol. 5-1, p. 817-819.)

DEP's Position

Other than ORS's recommendation to remove $97,000 in lobbying and advertising costs, DEP asserted that every expense included in Adjustment #36 should be allowed. These expenses include the lineman's rodeo costs, as DEP asserts the rodeo drives a culture of teamwork, where

linemen refine their skills, and it is an important tool for recruitment. (Tr. p. 645-14, l. 14 to p. 645-15, l. 4.) DEP also asserts that "employee incentives, service and safety awards, and any costs to recognize and reward . . . the Company's employees who serve our customers" should be allowed. (Tr. p. 318, ll. 13-18.) This includes on-the-spot bonuses and exceptional contribution awards "to provide timely recognition to employees who make a significant contribution to business operations." (Tr. p. 645-13, ll. 20-21.)

Likewise, DEP supports recovery of service (retention) and safety awards. (Tr. p. 645-14.) "Retention of [] critical skills are important to providing quality customer service," and "[c]elebrating successful completion of critical safety milestones is an important part of providing a safety culture." (Tr. p. 645-14.) The Company also disagrees "with the removal of [any] organization dues in support of business economic development in the communities we serve." (Tr. p. 318, ll. 18-20.) The Company supports "reward and recognition" expenses, related to items like team lunches and office parties, as "a necessary part of creating and fostering a supportive corporate work environment." (Tr. p. 645-15, ll. 8-9.)

During the hearing as part of the Non-allowables Stipulation, the Company agreed that it would withdraw its request to recover $39,532 in costs related to employee recognition and reward and $112,736 in other miscellaneous costs. (Tr. Vol. 5-1, p. 817-819.)

Commission Findings

After ORS began its audit review of the Company's filing, it submitted to the Company a list of miscellaneous O&M expenses totaling approximately $875,000 that ORS determined were non-recoverable. Subsequent to receiving ORS's recommendations, the Company proposed Adjustment #36, recommending an adjustment of ($97,000) and income taxes of $24,000 to

remove lobbying costs and image building advertising costs that it had requested through its Application. (*See* Tr. p. 326-20; Tr. p. 1238-10.).) The stipulation executed by ORS and the Company on April 15, 2019 resolved some of these disputes. Additionally, as stipulated into the record orally by counsel on the afternoon of April 15, 2019, the Company agreed to remove Other Employee Recognition and Reward amount of $39,532 and Other Miscellaneous in the amount of $112,736 and ORS agreed to withdraw its objection to the line-men's rodeo of $26,231, allocations of $4,066, accrual/timing difference in the amount of $12,366, and safety awards in the amount of $15,828. The remaining amounts in dispute are Coal Ash Litigation Costs of $389,995, Exceptional Contribution Awards of $116,530, Service Awards of $15,828, SC Chambers of Commerce and other SC community or economic development organizations in the amount of $45,559. Excluding Coal Ash Litigation Costs (which is addressed at pp. 69-75 of this Order), the total amount remaining in dispute is $177,917.

DEP and ORS also agreed to request an administrative proceeding to seek guidance from the Commission on what items should be considered "non-allowable" in future rate case proceedings. Clearly, the Company and ORS have "different perspectives of what should be recoverable." (Tr. p. 337, ll. 8-9.) We agree that an administrative proceeding to address "non-allowables" would be beneficial for future rate case proceedings.

Allowable expenses must be "related to utility operations" as opposed to "non-utility operations." (*E.g.* Docket No. 2003-213-W, Order No. 2003-657 at 2.) "The Commission cautions the Company that items not allowed for ratemaking purposes should not be charged to the Company's customers." (Docket No. 2012-218-E, Order no. 2012-951 at 24.) We believe that prior decisions of this Commission provide substantial guidance as to what expenses are "non-allowable." (*See*, e.g., Docket No. 90-626-C, Order No. 91-595 at 23; Docket No. 93-503-C, Order

No. 94-1229 at 25; Docket No. 95-1000-E, Order No. 96-15 at 30-31; Docket No. 2000-207-WS, Order No. 2001-887 at 36; Docket No. 2001-164-WS, Order No. 2002-285 at 11; Docket No. 2012-218-E, Order No. 2012-951 at 24.) As DEP acknowledged with respect to luxury-type expenses, "perception is reality[.]" (Tr. p. 671.)

It is the established practice of this Commission to disallow "safety and length of service awards" as well as "other miscellaneous gifts and awards." (Order No. 1994-1229 at 25; *see also* Order No. 1996-15 at 30 (disallowing recovery for "employee awards").) Likewise, "novelty items" and "luncheons" have been disallowed. (Order No. 1994-1229 at 25; Order No. 1991-595 at 23.) We have allowed "grocery items," particularly ones that relate to maintaining "sanitary conditions" in the workplace, (Order No. 90-694 at 27), and have long-recognized that Chamber of Commerce dues are 50% allowed. (Order Nos. 94-1229 at 26; Docket No. 95-1000-E, Order No. 1996-15 at 30-31; 01-887 at 36; 02-285 at 11.) We have previously disallowed expenses for non-professional organizations such as social and athletic clubs, (*e.g.* Docket No. 90-626-C, Order No. 91-595 at 20-21; Docket No. 93-503-C, Order No. 94-1229 at 8-9), and for charitable expenses, (Docket No. 89-178-E, Order No. 90-75 at 9). These expenses "have been traditionally classified as non-operating, or 'below-the-line', expenses for ratemaking purposes." (Docket No. 79-196-E, Order No. 79-730 at 67; *accord* Docket No. 79-196-E, Order No. 80-375 at 61; Docket No. 89-178-E, Order No. 90-75 at 9.) The record in this case clearly reflects that these expenses have at best a tangential relationship to DEP's provision of adequate and reliable electric service. DEP can be a good corporate citizen even if customers do not pay all the bills for DEP's tax-favored expenditures. (*See* Tr. 420.)

The regulatory compact depends on DEP's earnest and good-faith cooperation in all respects. It is troubling to the Commission that these expenses would have been passed through to customers if the ORS did not identify them. As a regulated utility, DEP has the right to the opportunity to earn a reasonable return on its prudently incurred costs. But a corollary of DEP's duty to request only just and reasonable rates is to only request recovery of such expenses as are just and reasonable. *See* S.C. Code § 58-27-810. DEP's status as a regulated monopoly means it owes a heightened responsibility to its customers.

For these reasons and on the evidence of record, the Commission finds that DEP's request to recover its expenditures for, Coal Ash Litigation Costs of $389,995 (as previously discussed on pp. 69-75 of this Order), Other Employee Recognition & Reward of $39,532, Other Miscellaneous in the amount of $112,736, and Lobbying and Advertising Expenses of $96,586, should be disallowed.

I. Bonuses and Incentive Compensation (Adjustments #22, 29)

ORS's Position

ORS recommends the costs of bonuses, DEP's Long-Term Incentive ("LTI") and Short-Term Incentive ("STI") plans, be shared equally between customers and shareholders. (Tr. p. 1234.) ORS witness Major testified this Commission should disallow 50% of the Company's LTI and STI program costs, resulting in a total disallowance of $4,172,000 from the Company's adjustment. Tr. p. 1234. Through ORS witness Major's surrebuttal testimony, ORS updated the salary allocator for DEP wages and salaries to the same date as O&M labor expenses, July 1, 2018. (Tr. 1238-3.)

Approximately 52.5% of DEP's LTI payouts are directly tied to the Company's stock performance. (Tr. p. 1238-4.) An additional 30% of DEP's LTI payouts, approximately $947,000, are directly tied to retention. (Tr. p. 1238-4; *see also* Ex. 26.) For DEP's Executive Leadership Team ("ELT"), 50% of STI is directly tied to earnings. For all other employees, 30% of STI is directly tied to earnings. (*Id.*)

ORS witness Major testified an adjustment of 50% to LTI and STI program costs would equitably share the costs between customers and shareholders. (Tr. pp. 1238-4, -5.) Both customers and shareholders benefit when employees perform their duties. (*See* Tr. pp. 1270-71.) DEP's shareholders are the primary benefactors of increased EPS and TSR. (Tr. pp. 1238-4, -5.) EPS and TSR can increase "due to an increase in the Company's rates through a rate case with no actual improvement of company efficiency or operating performance[.]" (Tr. p. 1265.) Because these incentives are directly tied to stock performance rather than service to customers, a balanced approach is needed to fairly allocate the customer burden. (Tr. p. 1238-4.)

ORS's testimony addressed how the costs of funding DEP's employee compensation packages should be allocated among DEP's revenue sources. (Tr. p. 1238-5.) ORS did not make any recommendations as to how much DEP should pay its employees or to how any employees' incentive compensation packages should be structured or disagree with "the Company's total compensation program[.]" (Tr. pp. 1238-5, 1273.)

DEP's Position

DEP witness Metzler testified incentive pay is linked to specific goal accomplishments. Incentive pay thereby encourages employees to accomplish certain objectives, promotes DEP's overall success, and provides for a compensation package that is market-competitive. (Tr. p. 645-5, ll. 8-13.) DEP witness Ghartey-Tagoe noted, "[t]he Company has an obligation to be responsive

to the market for talent and assure the competitiveness of the total compensation package it offers employees." (Tr. p. 295, ll.5-8.) DEP witness Metzler stated that "lowering the competitive levels of pay and benefits would be imprudent." (See Tr. p. 645-9, ll. 7-8.)

All employees have STI as a component of their total pay. STI is variable based on performance and is at-risk to the employees. (Tr. p. 645-5, ll. 4-5.) LTI is a major component of the compensation plans of executive employees. (*See* Tr. p. 645-5, ll. 15-17; p. 645-6, Figure 2.) A portion of DEP's STI and LTI plans are tied to EPS and TSR, which both "measure overall financial performance." (Tr. p. 645-7, ll. 18-19.)

DEP asserts that the ORS rationale for disallowing 50 percent of incentive compensation is misplaced because less than 50 percent of DEP incentive compensation was based on EPS or TSR. (*See* Tr. p. 646, ll. 10-18.) DEP's ELT of 100 senior manager employees receives STI payouts-based 50 percent on EPS; non-ELT employees' STI is based 30 percent on EPS. (Tr. pp. 647, 649.) The LTI for ELT plans is 50 percent based on EPS and 25 percent on TSR. (*See* Tr. p. 648, ll. 1-3; p. 649, ll. 4-10.) Thus, 75 percent of the long-term bonus potential of Duke's top executives is tied exclusively to DEP's stock performance. (Tr. p. 647, l. 21 to p. 648, l. 3.) An additional 547 employees are eligible for retention-based LTI that is wholly unrelated to DEP's financial performance. (Tr. p. 647, l. 13 to p. 648, l. 10.)

DEP witness Metzler testified that "compensation and incentives tied to metrics such as EPS and total shareholder return benefit customers because those metrics reflect how employees' contributions translate into overall financial performance." (Tr. p. 643, ll. 7-11.) For example, Ms. Metzler testified that EPS "is a measure of the Company's financial performance and that performance is reflective of how certain goals, such as safety, individual performance, team

performance and customer satisfaction, all of which are components of incentive pay, are met in a cost-effective way." (Tr. p. 643, ll. 11-17.)

DEP offered as an alternative position to "remove the actual portions [of total LTI and STI compensation] that are related to EPS and TSR," resulting in a disallowance of $2,582,000." (Tr. p. 650, ll. 14-19.). Excluding incentive compensation associated with EPS and TSR for just the CEO and ELT, the disallowance "would be approximately 622,000." (Tr. p. 650, l. 23 to p. 651, l. 5.) DEP continues to maintain that retention awards, because "not based on EPS or TSR" should be allowed. (Tr. p. 662, l. 22 to p. 663, l. 4.)

Commission Findings

As this Commission has previously recognized, it is just, reasonable, and consistent with sound regulatory policy to allow the Company to recover a portion of the cost of incentive pay for its officers and employees through rates. *See* Docket No. 2012-218-E, Order No. 2012-951, p. 18. "This treatment of incentive or at-risk compensation is consistent with treatment afforded to this expense item in past rate cases for . . . other electric utilities." *Id.* at 29. While "[t]he declaration of an existing practice may not be the substitute for an evaluation of the evidence," *see Heater of Seabrook,* 332 S.C. at 26, 503 S.E.2d at 742, several additional considerations serve to establish that a blended allowance/disallowance of incentive compensation is reasonable and appropriate in this case as well.

Most importantly, the evidence of record suggests that appropriately structured incentive compensation programs benefit shareholders and customers. Shareholders and customers share the benefits of DEP attracting and retaining quality employees. We conclude they should equitably share in the costs. To some extent, the proper level of allowable incentive compensation is difficult

to determine within the framework of a Test Year, given that "compensation payment levels may not be recurring" and no one can predict whether an eligible employee "will qualify for the incentive each year." (Docket No. 1993-503-C, Order No. 94-1229, at 24.) What is clear is that in almost every case, incentive compensation benefits customers and it benefits shareholders.

We also note that incentives are not always awarded and, therefore, may be non-recurring items not appropriate for inclusion in the revenue requirement. (*See* Order No. 2002-214, Page 21.) After review of the record and consideration of all aspects of the benefits and costs to be allocated between the shareholders and ratepayers, it is just, equitable, and of sound regulatory discretion to disallow for recovery 75% of the South Carolina allocation of Duke Energy CEO Lynn Good's compensation[25] and 50% of the compensation of the Company's next three highest executives, and to otherwise accept the Company's adjustment to normalize O&M labor expense and adjust O&M for executive compensation by ($348,000) and income taxes by $87,000.

The compensation packages DEP offers are under the control and discretion of management. The Commission does not direct the Company to compensate its employees under one method or another. The Commission agrees, as DEP witness Metzler testified, that "to attract a well-qualified and well-led workforce, the Company must compete in the marketplace to obtain the services of these employees." (Tr. p. 642, ll. 8-11.) The Commission is not directing DEP in how it must structure its incentive compensation packages.

However, customers and shareholders share in the benefits of nearly every achievement a well-calibrated incentive compensation package facilitates. That is, when a DEP employee finds

[25] The Commission heard testimony involving myriad specific complaints at the public night hearings that the total compensation of Duke Energy CEO Lynn Good is excessive and should not be borne by the ratepayers.

a cheaper way to do the same job, customers can see a decrease in their monthly bill and shareholders an increase in their dividend. This Commission has previously approved limited recovery and a division of these costs between customers and shareholders. We believe that, based on the record evidence as a whole, that a similar split is reasonable under the circumstances now before this Commission.

J. Adjustment for Customer Connect (Adjustment #30)

ORS's Position

ORS witness Major through Surrebuttal Testimony updated ORS's position on Customer Connect O&M expense to accept the 2018 actual O&M amount recommended by DEP witness Bateman which, after factoring in the $160,000 in Customer Connect expenses already included in the test year expenses, resulted in an adjustment to O&M of $763,000. (Tr. p. 1238-9.)

ORS recommends that the Commission deny recovery from customers $550,000 of inflation and contingency costs included by DEP in Adjustment #30 to normalize O&M for Customer Connect expenses based on the longstanding accounting principle that adjustments to Test Year expenses must be known and measurable. (*See* Tr. p. 1602-14, ll. 4-9.) As the inflation and contingency projections proposed by the Company are neither known nor measurable under regulatory principles, but merely estimates formulated by DEP employees, they should be denied by the Commission. (*See* Tr. p. 1238-9 (citing Commission Order Nos. 84-108 and 85-841).) Further, including these inflation and contingency estimates in the adjustment insulates the Company from any risks associated with project delays or cost overruns by shifting the risk to customers. (Tr. p. 1238-9.).

DEP's Position

The Company believes its proposed amount of $1,387,000 is reasonable and should be allowed. (Tr. p. 326-19.) In her rebuttal testimony, Company witness Hunsicker states the Company does not agree with the ORS' recommendation because the expenses correlate to the underlying fixed contracts with its vendors, and are therefore "known," because the Company has entered into fixed contracts with multiple vendors to develop the program, and the contracts contain provisions requiring the Company to provide specified levels of internal labor to support execution of the work; and "measurable," because the fixed contracts contain specified price terms, which serve as the basis for the Company's forecasted expenses. (Tr. p. 484-3.) According to witness Hunsicker, executed contracts account for a significant portion of the overall cost of the program and the contracts specify the amount of labor the Company must provide to execute the contracts. (Tr. p. 481.)

DEP witness Hunsicker provided a breakdown of the Company's estimated expenses in her Rebuttal Testimony. The $550,000 "to cover inflation and contingency" would "provide certainty that the program will not spend more than originally estimated." (Tr. p. 484-6.) DEP asserts that "[a]t a minimum, the Company's actual O&M in 2018 of $923,000 should be allowed." (Tr. p. 326-19). During the hearing, DEP witness Bateman offered "[a]n alternative to the Company's request" in the form of a "deferral of the incremental operating expenses incurred related to Customer Connect . . . including a carrying charge[.]" (Tr. p. 318, ll. 2-7.)

Commission Finding

Adjustment #30 normalizes O&M related to the development of DEP's new customer billing interface known as Customer Connect. The Company is seeking to adjust its test-year

O&M expense associated with the project from approximately $200,000 to approximately $1.4 million, which reflects the average expected annual O&M expenses over the next two years, from 2019 through 2020. (Tr. p. 480, ll. 13-18.) ORS has agreed to use of the 2018 actual Customer Connect O&M-spend of $923,000. (Tr. p. 1238-9; Tr. pp. 326-18, -19.) ORS and DEP dispute whether customers should be required to pay for an additional $550,000 in estimated inflation and contingency costs that DEP includes in Adjustment #30.

Rate applications must be based on a historic 12-month test period. S.C. Code Ann. Regs.103-823(A)(3). Any adjustments to the Test Year must reflect known and measurable changes in the Company's operating experience. *Heater of Seabrook, Inc. v. Public Serv. Comm'n of South Carolina,* 324, S.C. 56, 60, 478 S.E. 2d 826, 828 (1996) (citing *Southern Bell Tel & Tel. Co. v. South Carolina Pub. Serv. Comm'n*, 270 S.C. 590, 244 S.E.2d 278 (1978)). According to *Hamm v. South Carolina Public Service Comm'n*, when making known and measurable adjustments absolute precision is not required, but the adjustment must be known and measurable within a reasonable degree of certainty. 309 S.C. 282, 291, 422 S.E.2d 110, 115 (1992). By adjusting from the Company's Test Year to the 2018 actual expense, the Commission is relying on a known and measurable amount. We therefore agree with DEP and ORS that the use of the 2018 actuals is reasonable.

However, no statute, regulation, or accounting principle permits the Company to collect from customers unknown and speculative expenses. First, DEP witness Hunsicker testified that the Company is requesting the $550,000 in inflation and contingency to "provide certainty that the program will not spend more than originally estimated." (Tr. p. 484-6.) Thus, the $550,000 reflects the upper limit of the costs of the project rather than reflecting expenses known and

measurable within a reasonable degree of certainty. Further, the Company's recommendation to recover the average of its projected 2019 and 2020 Customer Connect-related O&M would permit the Company to recover costs based on contingency and inflation. These adjustments are not known and measurable. "Historically, the Commission has rejected [inflationary] adjustments" and noted that "many of the Commission's ratemaking practices"—including "annualizing adjustments . . . and deferral accounting"—guard the financial interests of the utility. (Order No. 1985-841, pp. 21-22.) Thus, we have recognized that, in general, inflation adjustments are "generalized and speculative[.]" (*Id.* at p. 22; accord Order No. 1984-108, pp. 25-26.) Contingency and inflation costs are necessarily based on projections and estimates and serve to shift the risks from the Company to the customers *See id.*

Although DEP witness Hunsicker testified that the Company has "relooked at" its contingency and inflation estimates, and revised them downwards, DEP witness Hunsicker's prefiled testimony states the Company is requesting $550,000 in contingency and inflation costs. (Tr. p. 484-6.) Ms. Hunsicker adopted this testimony from the stand. (Tr. p. 466.) There are additional reasons to believe that this number is not as known and measurable as the Company suggests. First, DEP's 2018 actual experience is already $464,000 under DEP's estimated average spend for 2019 and 2020. (*See* Ex. 18 (projected O&M spend); Tr. pp. 326-18, -19 (actual 2018 O&M spend of $923,000).) Second, while DEP asserted at the hearing that it had entered fixed contracts that reduced the amount of contingency costs it was requesting, it did provide any evidence to support the number it was asserting.

Most significantly, DEP assumes any fixed contracts will "be delivered on specific milestones and paid on those." (Tr. p. 537, ll. 15-16.) However, fixed contracts do not necessarily

establish that an expense is known and measurable. (Tr. pp. 1346-47.) Whether these contracts will be performed under all of their terms (including price) is, to a significant degree, "contingent upon a future event outside the control of" the utility. (*See* Docket No. 2005-13-WS, Order No. 2007-138 at 11.) Concluding that contracts are fixed before they have been fully performed also overlooks the possibility of one or both sides to "fail[] to understand their own contract," which is an issue with respect to the CertainTEED Gypsum contract at-issue in this very proceeding. (*See* Tr. p. 1347.)

DEP's proposed adjustments also require the Commission to look well-beyond the Test Year. ORS and DEP already agreed to update the Customer Connect expenses to reflect the Company's 2018 operating experience; to go further based on the record before this Commission would be inappropriate and inconsistent with settled fundamentals of ratemaking principles.

For these reasons, the Commission adopts ORS's recommendation to adjust other O&M related to Customer Connect to the actual amount experienced by the Company in 2018 of $923,000. (Ex. 65, KLM-2.) Accounting-order Order No. 2018-552 for deferred expenses related to Customer Connect is null and void effective as of the date of this Order.

K. Deferral Treatment

ORS's Position

ORS recommends that DEP recover a "return of" all deferred costs, with the exception of the Coal Ash Disallowance recommended by ORS witness Wittliff. (Tr. p. 1247-5.) To determine whether a return is warranted on a given deferral, ORS recommends that each deferral balance be separated into two categories of costs, operating-related costs and the capital-related costs. (Tr. p. 1247-4.) ORS recommends that each be subject to the same regulatory accounting treatment

required for each category absent an accounting deferral. (Tr. p. 1247-4.) ORS recommends the recovery of both the operating-related costs and the capital-related costs and a return on only the capital related costs. Allowing the Company a return on deferred O&M expenses not only allows the Company to recover out of test period expenses, but also gives it a return on expenses that it would not have earned had the expense been incurred within the test period. (Tr. p. 1247-10.)

ORS asserts that there is no accounting guidance or legal authority establishing the right of a utility to a "return on" a deferred cost and highlights the discretionary nature of the determination. (Tr. pp. 1245-3, -4.) While the Commission approved the Company's request for an accounting order to defer the expenses detailed in the Application, the Commission orders provide no guarantee to the Company for cost recovery including a return on these expenses. ORS notes the NARUC Rate Case and Audit Manual does not guarantee a return either but recommends that the regulatory commission examine a deferral to determine whether a return and rate-base treatment are appropriate. (Tr. p. 1245-4.)

Likewise, regulatory commissions around the country take a variety of approaches to deferrals. (*See* Tr. pp. 1247-6, -7.) This includes the process for approving deferrals, for determining whether a return is warranted, and for inclusion in rate base. (*Id.*)

ORS highlights three significant issues with the Company's position. First, ORS offers that DEP's proposed treatment for "returns on" deferrals, if strictly applied, may encourage the Company to seek more accounting deferrals for O&M costs in the future that are not classified as extraordinary. (Tr. p. 1247-8.) According to ORS, the ultimate "impact of this practice will be greatly inflated costs in future years which will be passed on to customers through rates." (Tr. p. 1247-8.) Second, allowing a "return on" and rate base treatment of operating expenses overlooks

the fact that operating expenses are typically collected through rates. (Tr. p. 1247-4, -5.) ORS notes that the Company collected $562,000,000 in operating revenues from South Carolina customers during 2017 through rates designed to allow recovery of the Company's operating costs as well as provide a reasonable return on shareholders' capital investments. (Tr. p. 1245-5; pp. 1247-4, -5.) The Company does not rely solely on investments from equity holders or the issuance of debt to generate cash to support its operations. (*See* Tr. p. 1247-5.)

Finally, consistent with fundamental regulatory accounting principles, ORS proposes that O&M expenses are not entitled to a weight average cost of capital ("WACC") return and are not appropriate to include in rate base. (Tr. pp. 1254-4, -5; pp. 1257-4, -5.) However, ORS does not dispute that the Company may recover prudently incurred and deferred capital costs by recording capital costs to rate base and recovering those costs through amortization expense over the life of the asset, while earning a return on the unamortized balance. (*Id.*) ORS contends that its recommendation to limit the Company's ability to earn a return only to deferred capital-related expenses is bolstered by adjustments that allow the Company to include costs that were largely incurred outside of the test year. Out-of-test year expenses include approximately $5,000,000 in amortization expense. (Tr. p. 1247-2.) ORS's recommended accounting treatment contributes approximately $3,500,000 to the ORS original proposed revenue increase of $32,130,000--more than 10 percent. (Tr. p. 1247-2; *see also* Order Ex. A (updating ORS proposed revenue change based on stipulation).) In comparison, the Company's deferred balance proposal includes approximately $16,000,000 in amortization expense and approximately $21,000,000 in unamortized deferral balances in rate base. (Tr. p. 1247-2.) The Company's recommended

treatment contributes roughly $18,000,000 (more than 25 percent) to the Company proposed revenue increase of $68,668,000. (Tr. p. 1247-2.)

Whether to allow a return presents "an accounting/revenue requirement issue[.]" (Tr. p. 803-19.) "[T]here is no requirement that the Company receive a return on its expenditures that are not related to traditional rate base items." (*Id.*) According to ORS, when viewed within the context of the overall rate case, the overall financial position of the Company, and the needs of DEP's customers, "ORS's proposals represent a reasonable and equitable approach to the Company's recovery of deferred costs." (Tr. p. 1247-2.)

DEP's Position

In support of its position that DEP should receive returns on deferred O&M expenses removed by ORS, the Company presented Rebuttal testimony from DEP witnesses Bateman, Wright, and Hevert. DEP points to the fact that "[t]here is a real cost of debt and a real cost of equity that the Company incurs in financing the costs" over time. (Tr. p. 316, ll. 2-4.) Thus, the Company asserts, "if a return on these deferred expenses is not allowed, . . . the Company has not been allowed the opportunity to recover its legitimate and prudent costs." (Tr. p. 839-31.) The Company argues that "[t]o disallow recovery of these costs would be to disallow prudently incurred costs" because the deferred expenses "could not have been collected from customers in the period in which they were incurred," necessitating borrowing. (Tr. p. 316; Tr. p. 326-7)

DEP also disputes the relevance of certain of the authorities cited by ORS in support of its position. DEP witness Bateman argues "that cite to the FERC chart of electric accounts has nothing to do with deferrals. It has to do with criteria to book items to certain FERC accounts that are extraordinary income or extraordinary deductions[.]." (Tr. p. 425, ll. 13-18.) Similarly, DEP

contends that it is difficult to compare the regulatory approaches to deferrals taken across jurisdictions in this country due to the myriad of regulatory schemes. (*See* Tr. pp. 327-28.)

With respect to the appropriate criteria for deferrals, DEP recommends a generic docket and offers that such a docket would allow more for clearer analysis of "what criteria's appropriate for South Carolina given our regulatory framework[.]" (*See* Tr. pp. 327-28.) "Customers have benefited through the money spent for the underlying costs" and "from delays of and mitigation of rate increases that directly resulted from the deferrals in this case." (Tr. p. 331, ll. 11-15.) When deferrals postpone rate cases, customers benefit every month that their bills are not increased. (Tr. pp. 332-33.) DEP witness Ghartey-Tagoe testified that "deferrals and the ability to earn returns on deferrals" allow the Company to postpone rate cases, and the Company will come in more frequently for rate cases if it cannot employ deferrals. (Tr. p. 398, ll. 7-21.)

Commission Finding

The Company requests recovery of deferred costs from accounting orders which the Company has accumulated. (*See* Application p. 8, nn.5-11; Ex. 66.) In each of the Company's proposed deferrals, the Company calculated a WACC return on deferred costs that it also requests to recover. The Company further proposes to include the unamortized balance of each deferral in rate base. ORS agrees to a "return of" all deferred costs and a "return on" deferred capital related costs, but otherwise disagrees that the deferred balances should earn a return or that the unamortized balances should be included in rate base.

The Company proposes the recovery of deferrals through Adjustments #17 for deferrals granted before the Company's last rate case, #18 for Deferred Environmental Costs, #19 for SC AMI, #30 for Customer Connect, and #35 for SC Grid Mod. (*See* Tr. p. 1247-4.) Adjustment #18,

relating to coal ash, is addressed in a separate section of this Order. Disputes between ORS and DEP as to the appropriate amortization period for the deferrals in Adjustments #17, 19, and 35, are also addressed in a separate section of this Order.

Treatment of deferrals is ultimately a matter of the Commission's discretion. The Commission has a duty to balance the needs of the public and the utility such that the public is served without the utility being disserved. *Fed. Power Comm'n v. Hope Natural Gas, Co.*, 320 U.S. 591, 603 (1944) ("the fixing of 'just and reasonable' rates involve a balancing of the investor and the consumer interests").

Both ORS and DEP have adduced evidence that customers and the Company, respectively, benefitted from the deferrals at issue in this case. DEP benefitted by gaining the possibility of recovering out-of-Test Year expenses and avoiding the need to come in for a rate case at a non-opportune time. Customers benefitted from receiving services that DEP paid for up-front and, to the extent that a rate case would have increased rates, from lower rates over that period. How this Commission treats returns on deferrals should reflect this sharing of these benefits.

DEP's proposal to, first, provide a WACC on all deferrals and, then, to include in rate base all unamortized amounts provides a double-benefit to the Company. Ensuring that the Company can recover carrying costs associated with capital-related investments strikes a balance between the interests of the Company and customers while adhering to a clear and well-established regulatory principle. In simple terms, "rate base and operating expenses are treated differently, with only rate base items being eligible for a return." (Tr. 803-19.) While the ultimate policy that this Commission will adopt with respect to deferrals and returns on deferrals should be determined in a subsequent administrative docket, this simple principle is backed by objective criteria, which

provides all parties with clear expectations. The existence of these objective criteria also promotes transparency and the ability to understand how this Commission sets the rates that a utility is allowed to charge.

We conclude that DEP is entitled to recover a "return of" all deferred costs (with the exception of coal ash costs discussed elsewhere in this Order) and that DEP shall be allowed a return on its capital-related deferred costs only. Such treatment achieves an equitable sharing of deferred costs between customers and shareholders that binding case law requires. *Hope,* 320 U.S. at 603 ("the fixing of 'just and reasonable' rates involve a balancing of the investor and the consumer interests.")

Several other considerations support our conclusion. DEP's proposed treatment for "returns on" deferrals, if strictly applied, would tend to encourage the Company to seek more accounting deferrals for O&M costs that are non-extraordinary. (*See* Tr. p. 1247-8.) The ultimate impact of this practice will be to greatly inflate costs in future years, which will be passed on to customers through rates. (*See* Tr. p. 1247-8.) Allowing a "return on" and rate base treatment of operating expenses also overlooks the fact that operating expenses are typically collected through rates. (Tr. pp. 1247-4, -5.) The Company collected $562,000,000 in operating revenues from South Carolina customers during 2017 through rates designed to allow recovery of the Company's operating costs as well as provide a reasonable return on shareholders' capital investments. (Tr. p. 1245-5; Tr. pp. 1247-4, -5.) Thus, the Company does not rely solely on investments from equity holders or the issuance of debt to generate cash to support its operations. (*See id.*)

These facts and considerations support our conclusion that the Company's requests for a WACC return on every dollar in a deferred account is unreasonable. Finally, the Commission is

mindful that it sets rates on a historic Test Year basis and allowing unconditionally a WACC on all deferrals would represent a significant departure from this fundamental standard.

We also disagree with the Company's contention that disallowing a return on deferred O&M expenses denies it "the opportunity to recover all of its costs associated with these deferred accounts." (Tr. p. 839-31.) The Company has the opportunity to recover carrying costs through this rate case. It is this Commission's prerogative to determine whether a return on deferred costs on O&M expenses is warranted. There is no denial of a legitimate and meaningful opportunity.

The Commission concludes that allowing the Company to earn a WACC return on capital-related costs and a return of its deferred operating-related costs is a reasonable, equitable, and lawful approach to allowing the Company's recovery of deferred costs. The Company may recover $3,500,000 in deferred costs requested through this case. (*See* Tr. p. 1247-3.)

L. Amortization Periods (Adjustments # 17, 19, 35)

ORS's Position

With respect to Harris COLA, ORS bases its recommendation to amortize the deferral balance over an eight-year period on the time period the Company incurred and deferred the costs, which was from 2006 to 2013. (Tr. p. 1245-6.)

ORS witness Morgan testified that ORS recommends this Commission set the amortization period for the South Carolina AMI the amortization period based upon the service life of the underlying asset. (Tr. pp. 1319-4, 1319-5, 1380.) The fifteen-year amortization period mirrors the period of anticipated benefit to the customer paying for the asset. (Tr. p.p. 1319-4, -5)

ORS witness Sandonato testified that a five-year amortization period for SC Grid Mod will ensure that transmission and distribution investments for which the Company seeks recovery in this rate case will be paid for by the time of the next rate case, when the Company will likely seek to recover its next round of grid investments. (Tr. p. 1049-12.)

DEP's Position

DEP witness Bateman testified that "exact amortization periods are subjective," offering that "there needs to be a balance of consideration of both the impact on customer rates and the impact on the Company's cash flow." (Tr. p. 326-11.) DEP also asserts that "the longer amortization periods exacerbate the disallowance" of a return on deferred O&M costs recommended by the ORS. (Tr. p. 326-11; Tr. p. 839-32.)

With respect to Harris COLA, witness Bateman asserts that ORS's "recommendation [of 8 years] fails to recognize that absent the settlement in the last case, the Company would have begun amortizing these costs starting January 1, 2017." (Tr. p. 326-11.) DEP therefore contends a five-year amortization period for Harris COLA is appropriate. (*Id.*)

Commission Finding

As an initial matter, the Commission notes that ORS and DEP are in agreement with respect to the appropriateness of a five-year amortization period for certain coal ash-related deferred expenses included in Adjustment #18. (*See* Tr. p. 326-11; pp. 1249-9, -10.) We agree with the parties that this is a reasonable amortization period.

ORS and DEP disagree on the appropriate amortization periods for deferred cost balances for costs incurred in connection with the development of proposed Units 2 and 3 of the Shearon

Harris Nuclear Station ("Harris COLA") (Adjustment #17), SC AMI (Adjustment #19), and SC Grid (Adjustment #35). In its Application, DEP proposed a five-year amortization period for Harris COLA, three years for the SC AMI and two years for SC Grid. (Tr. p. 326-11.) ORS proposes an 8-year amortization period for Harris COLA, 15 years for SC AMI, and 5 years for SC Grid. (Tr. pp. 1245-6, -12; Tr. pp. 1319-4, -5; Tr. p. 1049-12.)

The Commission concludes that tying amortization periods to common-sense, objective measures is appropriate. Use of objective measures promotes transparency in regulation. With respect to Grid Mod expenses, the Commission concludes it is reasonable to amortize them in a manner akin to rate expenses, such that the costs incurred up to this rate case will be recovered by the time of the next rate case. *C.f.*, *e.g.*, *Porter v. S.C. Pub. Serv. Comm'n*, 328 S.C. 222, 231, 493 S.E.2d 92, 97 (1997) ("Ideally the amortization period matches the expected interval between rate cases.") Such an approach avoids unnecessary compounding of costs and assures the Company of a return of its investment within a reasonable period of time.

With respect to Harris COLA, the most objective amortization period presented is an eight-year period equal to the time over which the expense was accrued. Had DEP begun amortizing these expenses then, a five-year amortization period now would be reasonable. Matching the period for unwinding the expense to the period over which the expense was incurred is generally recognized as a reasonable approach. Indeed, it is facially consistent with the parties' agreed-upon treatment of unprotected Property Plant and Equipment in connection with the Tax Cuts and Job Act, where the unprotected PP&E is flowed back over the same amount of time it was collected. (*See* Tr. p. 555, ll. 8-13.)

With respect to AMI, a 15-year amortization period is consistent with principles of cost causation and cost-benefit mirroring. Further, DEP witness Schneider testified that the service life of the AMI meters may actually be over 20 years. (Tr. p. 519, ll. 16-24.) This suggests that a 15-year amortization period is conservative and reasonably balances the Company's cash-flow needs with customer rate impacts.

The nature of the customer's interests were expressed at the Night Hearings. Based on that testimony, the Commission concludes there is a substantial risk that many low and fixed-income, elderly, and agricultural customers would be disproportionately and negatively impacted by DEP's full-requested increases. Longer amortization periods can provide a measure of rate mitigation. The Commission agrees with DEP witness Bateman that it must balance customer rate impacts and the Company's cash flow needs. Based on the totality of the Commission's decision in this Order with respect to the rates the Company will be allowed to charge, and with special reference to the Commission's reasoning with respect to ROE, the Commission is fully satisfied that the Company has excellent cash flow and ability to access capital. Accordingly, the Commission concludes that balancing cash flow with rate impacts also tends to support a longer amortization period.

For these reasons, the Commission finds that the amortization periods for Harris COLA shall be 8 years; SC AMI 15 years; and SC Grid 5 years. These periods are just and reasonable.

M. Uncontested Adjustments

DEP's Service Charge, Landlord Service Charge, Reconnect Charge, and EFC calculation

ORS witness Seaman-Huynh testified that ORS reviewed DEP's proposed adjustment to its Service Regulations, specifically DEP's Service Charge, Landlord Service Charge, Reconnect Charge, and EFC calculation, and ORS found them to be reasonable. (Direct, p. 17, ll. 6-9).

No party contested these Company proposed adjustments. This Commission finds them to just and reasonable.

Customer Growth Factor

ORS's Position

ORS witness Seaman-Huynh also testified regarding the Company's customer growth factor. ORS found an increase in the number of DEP customers in South Carolina when comparing the end of the Test Year and the average number of customers during the Test Year. (Direct, p. 17, ll. 14-16). To capture the additional revenues and expenses generated by customers added to the Company's system, ORS included an adjustment for customer growth. (Direct, p. 17, ll. 16-17). The customer growth factor is calculated by taking the difference between the total number of customers at the end of the Test Year and the average number of customers during the year and dividing the result by the average number of customers during the Test Year. (Direct, p. 17, ll. 17-20). This methodology yields a retail customer growth factor of 0.0267 percent for the Company and is reflected in ORS witness Major's Adjustment #40. (Direct, p. 17, ll. 20-22).

DEP's Position

According to DEP witness Bateman, the customer growth adjustment compares the average number of customers during the test period to the end of test period number of customers in order to annualize the impacts of customer growth to an end of test period level. (Rebuttal, p. 15, ll. 5-8). Witness Bateman testified that the amounts calculated by the Company and ORS for this adjustment are different based on other areas of disagreement, but each party agrees on the concept and the use of the method used to calculate this adjustment. (Rebuttal, p. 24, ll. 18-20).

Commission Finding

The Company and the ORS agree on the concept and use of the method used to calculate this adjustment. The ORS and Company amounts differ only due to the underlying adjustments of the ORS and the Company and the recommended ROE. The Commission agrees to a Customer Growth factor of 0.0267 percent in this proceeding.

AMI Report

Upon inquiry from this Commission, DEP witness Schneider agreed that the Company would be willing to provide an annual report to the Commission on quantifiable customer savings related to AMI meter deployment. (R. p. 504, ll. 16-25, p. 505, ll. 1-9).

Medical Opt-Out Tariff

Upon inquiry from this Commission, DEP witness Schneider agreed that the Company would look into whether it could offer a medical opt-out tariff to its South Carolina customers in the same way it offers one to its North Carolina customers. (R. p. 505, ll. 10-25 through p. 507, l. 3).

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. We find most compelling and give the greatest weight to the objective testimony and analysis of witness Parcell. Mr. Parcell's analysis is buttressed by the analyses provided by witnesses Chriss and O'Donnell. Accordingly, we find that an award of a ROE of 9.50 percent is just and reasonable and supported by the reliable, probative, and substantial evidence on the whole record and in the public interest.

2. We find that DEP's cost of debt is 4.16 percent, is just and reasonable and supported by the reliable, probative, and substantial evidence on the whole record.

3. We find that a hypothetical capital structure of 47 percent debt and 53 percent common equity is just and reasonable and supported by the reliable, probative, and substantial evidence on the whole record and in the public interest.

4. We find that the spill at Dan River was an impetus for the enactment of North Carolina's CAMA and that DEP's South Carolina customers cannot be forced to pay costs incurred pursuant to a unilateral act of the North Carolina legislature. We further find it would not be just and reasonable for DEP's South Carolina customers to pay costs incurred solely as a result of a North Carolina law, for which no benefit is received to South Carolina ratepayers. We find DEP may recover $301,559,784 total on a system basis, as it related to coal ash expenses at this time.[26] Therefore, in this proceeding, DEP is denied recovery of $333,480,308 on a system basis in coal ash expenses from its South Carolina customers. Remaining allowable coal ash expense should

[26] A portion of the DEP's recoverable coal ash expenses was approved for recovery in Commission Order No. 2016-871.

be amortized over a five-year period. These findings are just and reasonable and supported by the reliable, probative, and substantial evidence on the whole record and in the public interest.

5. We find DEP's requested revisions to its depreciation rates is just and reasonable and supported by the reliable, probative, and substantial evidence on the whole record and in the public interest.

6. We find the following to be just and reasonable based on the reliable, probative, and substantial evidence presented and in the public interest: BFC rates of $11.78 for residential customers; $12.34 for SGS customers; $11.31 for SGS Constant Load customers; and as to MGS and S&I customers, the Company should limit the increase to the BFC to be no greater than the average percentage increase of the SGS and SGS Constant Load customers.

7. We deny DEP's request to:

A. Reduce the differential between the declining block in the winter months for Schedule RES;

B. Reduce the differential between summer and winter demand rates for Schedule R-TOUD;

C. Reduce the differential between summer and winter demand rates for Schedule SGS-TOU;

D. Reduce the differential between on-peak and off-peak energy rates for Schedule SGS-TOU;

E. Increase the off-peak excess demand charge from $2.95/kilowatt ("kW") to $3.30/kW rather than the same percentage as other demand charges for Schedule SGS-TOU;

F. Decrease the off-peak excess demand charge from $1.25/kW to $0.89/kW rather than the same percentage as other demand charges for Schedule LGS-TOU; and,

G. Increase the on-peak demand charge by only 50 percent of the energy rate rather than the same percentage as the energy rate for Schedule LGS-TOU.

We find DEP's requests regarding the above are not just and reasonable and in the public interest at this time, because the AMI meters have not been deployed in sufficient quantities and for sufficient time to provide the necessary data to make these requested changes.

8. We find DEP's proposed adjustment to its Service Regulations, specifically DEP's Service Charge, Landlord Service Charge, Reconnect Charge, and EFC calculation to be just and reasonable and supported by the reliable, probative, and substantial evidence on the whole record and in the public interest.

9. We find that a retail customer growth factor of 0.0267 percent is just and reasonable and supported by the reliable, probative, and substantial evidence on the whole record and in the public interest.

10. We find that the adjustments agreed upon by the Company and ORS are reasonable and are as follows: removal of Lobbying and Image-building advertising expenses of $97,000, removal of other Employee Recognition and Reward amount of $39,532 and Other Miscellaneous in the amount of $112,736; and ORS's withdrawal of its objection to line-men's rodeo costs of $26,231, allocations of $4,066, accrual/timing difference in the amount of $12,366, and safety awards in the amount of $15,828.

11. Regarding Adjustment #36 (remove certain expenses), the Commission disallowance of Other Employee Recognition and Rewards, Other Miscellaneous, Lobbying and

Advertising, and litigation expenses is just and reasonable and supported by the reliable, probative, and substantial evidence on the whole record and in the public interest.

A. DEP should not be allowed to recover $249,000 in expenses related to Other Employee Recognition and Rewards, Other Miscellaneous, and Lobbying and Advertising.

B. DEP should not be allowed to recover $390,000 in litigation expenses.

12. We find that ORS Adjustment #38 (ongoing payment obligation) is just and reasonable and supported by the reliable, probative, and substantial evidence on the whole record and in the public interest. The Commission accepts the ORS adjustment of ($0) and rejects the Company's proposal to incorporate the ongoing payment obligations to CertainTEED into the revenue requirement.

13. We find that it is appropriate, equitable, and consistent with regulatory principles to adopt a 75% disallowance of the $175,000 in South Carolina allocation of Duke Energy CEO Lynn Good's compensation, and a 50/50% disallowance of compensation of the next three highest-paid executives and otherwise accept the Company's Adjustments #22 and #29. We find that ORS Adjustment #30 (Customer Connect) removing $550,000 in inflation and contingency costs and declaring Order No. 2018-552 for deferred expenses related to Customer Connect null and void is just and reasonable and supported by the reliable, probative, and substantial evidence on the whole record and in the public interest. The Company shall be entitled to recover its actual 2018 Customer Connect O&M expenditure of $923,000.

14. We find that with respect to Adjustments # 17, #18, #19, #30, and #35, allowing the Company a WACC-return on deferred capital-related expenditures is just and reasonable and supported by the reliable, probative, and substantial evidence on the whole record and in the public

interest. Accordingly, the Company may recover $3,500,000 in revenue annually to cover deferred costs requested through this case.

15. We find the following amortization periods are just and reasonable and supported by the reliable, probative, and substantial evidence on the whole record and in the public interest: (i) 8 years for Harris COLA (*see* Adjustment #17); (ii) 15 years for the South Carolina AMI meters (Adjustment # 19); (iii) 5 years for South Carolina "Grid Mod" (Adj. #35); and (iv) 5 years for previously deferred coal ash-related expenses (Adjustment #18).

16. We find that the following uncontested adjustments are just and reasonable and supported by the reliable, probative, and substantial evidence on the whole record and in the public interest: ORS adjustment for Nuclear Materials and Supplies Inventory at Power Generation Sites.

17. Regarding Adjustment #20 (Normalization of Storm Costs) and as filed in the Adjustments Stipulation by the Parties, we find that the use of a 5-year average (removing the highest (2016) and lowest (2013) year) without any inflation adjustment to be appropriate. The Company shall adjust O&M by $1,018,000 and income taxes by ($254,000).

18. Consistent with the Adjustments Stipulation filed by the Parties, we find that the Company may establish an end-of-life nuclear reserve fund as proposed in Adjustment #15. The Company shall adjust depreciation and amortization by $2,938,000, income taxes by ($733,000), working capital by ($2,938,000), and accumulated deferred taxes by $733,000 to adjust the reserve for end-of-life nuclear costs. DEP shall provide ORS with an annual update of the accumulated value of such fund.

19. Requiring DEP to provide an annual report to this Commission on quantifiable customer savings related to AMI meter deployment is just, reasonable, and in the public interest.

20. Establishment of an administrative docket to address this Commission's policy with respect to non-allowable expenses is just, reasonable, and in the public interest.

21. Establishment of an administrative docket to address this Commission's policy with respect to deferral accounting is just, reasonable, and in the public interest.

22. Requiring DEP to provide an annual report to this Commission regarding the salary, benefits, and bonuses paid to utility company officers and members of management, breaking down the specific amounts being charged to South Carolina customers and otherwise consistent with NASUCA Executive Compensation Resolution 2009-09 is just, reasonable, and in the public interest.

23. We find DEP shall provide the medical opt-out tariff that it currently offers to its North Carolina customers to its South Carolina customers.

24. We find that the Adjustments Stipulation entered into between the ORS and DEP and filed on April 17, 2019, is just, reasonable, and in the public interest, and is therefore adopted by this Commission as part of this Order and attached hereto as Order Appendix A.

VI. IT IS THEREFORE ORDERED THAT:

1. The calculation of the base rates required to generate approximately $41,474,000 revenue increase shall be established based on a 9.50% ROE and a capital structure that included 47% debt and 53% common equity.

2. DEP may recover $301,559,784 total, as it related to coal ash expenses, at this time.

3. The following BFC rates shall be implemented: $11.78 for residential customers, $12.34 for SGS customers, $11.31 for SGS Constant Load customers, and as to MGS and S&I

customers, the Company shall limit the increase to the BFC to be no greater than the average percentage increase of the SGS and SGS Constant Load customers.

4. DEP shall provide the medical opt-out tariff similar to that which it currently offers to its North Carolina customers to its South Carolina customers.

5. DEP shall examine the feasibility and customer benefits of a storm damage reserve fund and shall provide a proposal for ORS to evaluate before the Company's next rate case.

6. DEP shall provide ORS with an annual update of the accumulated value of its end of life nuclear fund.

7. The full benefits of the TCJA are passed through to Customers. As a result of the stipulation entered into between DEP and Nucor, to which no party objected, an EDIT Tax Savings Rider is authorized for the base rate savings due to the TCJA. The EDIT Tax Savings Rider will remain in place until base rates are reset to reflect these savings in a future rate case proceeding. The ORS will review the changing ARAM rate related to protected EDIT to ensure that it is correctly calculated during the annual change in the EDIT rider.

8. Also pursuant to the DEP and Nucor stipulation, the LGS class percentage revenue increase shall be applied equally to the LGS-CUR-TOU rate schedule.

9. DEP shall continue to file quarterly reports with the Commission and ORS showing:

a. Rate of Return on Rate Base;

b. Return on Common Equity (allocated to South Carolina retail electric operations);

c. Earnings per share of common stock; and

d. Debt coverage ratio of earnings to fixed charges;

10. Deny any outstanding motions not otherwise addressed within this Order.

11. Revised tariffs shall be filed within 10 days of receipt of this Order, consistent with the Commission's Rules and Regulations. The tariffs should be electronically filed in a text searchable PDF format using the Commission's DMS System (https://dms.psc.sc.gov). An additional copy should be sent via email to etariff@psc.sc.gov to be included in the Commission's ETariff System (http://etariff.psc.sc.gov.) Future revisions should be made using the ETariff System. The tariffs shall be consistent with the findings of this Order and agreements with the other parties to this case. DEP shall provide a reconciliation of each tariff rate change approved as a result of this order to each tariff rate revision filed in the ETariff System. Such reconciliation shall include an explanation of any differences and be submitted separately from the Company's ETariff System filing.

12. DEP shall file a schedule showing the revenue produced by each and every tariffed rate approved by the Commission and reconcile the revenue produced, by tariffed rate, to the revenue requirement approved in this Order.

13. DEP shall provide an annual report to this Commission on quantifiable customer savings related to AMI meter deployment.

14. An administrative docket to address this Commission's policy with respect to non-allowable expenses shall be established.

15. An administrative docket to address this Commission's policy with respect to deferral accounting shall be established.

16. DEP shall provide an annual report to this Commission regarding the salary, benefits, and bonuses paid to utility company officers and members of management, breaking down the specific amounts being charged to South Carolina customers and otherwise consistent with NASUCA Executive Compensation Resolution 2009-09.

17. DEP shall charge the rates approved herein for service rendered after June 1, 2019. The schedules will be deemed filed with the Commission under S.C. Code Ann. § 58-27-870.

18. This Order shall remain in full force and effect until further Order of this Commission.

BY ORDER OF THE COMMISSION:

Comer H. Randall, Chairman

Justin T. Williams, Vice Chairman

(SEAL)

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2018-318-E

In the Matter of:	)	
	)	
Application of Duke Energy Progress, LLC For Adjustments in Electric Rate Schedules and Tariffs and Request for an Accounting Order	)	**STIPULATION**

This Stipulation is made by and between the South Carolina Office of Regulatory Staff ("ORS") and Duke Energy Progress, LLC (the "Company") (together, the "Parties").

WHEREAS, on November 8, 2018, the Company filed an application in the above referenced proceeding proposing changes in its rates, charges, and tariffs for electric service to be effective on June 1, 2019 ("Application");

WHEREAS, in the Application and through testimony the Company has proposed numerous accounting adjustments to be adopted in this proceeding for ratemaking and reporting purposes;

WHEREAS, the ORS has reviewed the Company's proposed accounting adjustments and offered its own adjustments where it believed necessary and appropriate to do so in light of ORS's statutory mission, accounting principles, and previous decisions of the Public Service Commission of South Carolina;

WHEREAS, through joint efforts to resolve rate case issues in this proceeding, the Parties have reached agreement as to Adjustments 22 (Normalization of Storm Costs); 28 (Credit Card

Fees); 25 (Rate Case Expenses); 15 (End-of-Life Nuclear Reserve); 39 (Nuclear Materials and Supplies); and 21 (Adjustment to Non-Labor O&M);

WHEREAS, the Parties have determined that their interests and those of the public would be best served by reaching an agreement on these matters under the following terms, and the Parties stipulate and agree as follows:

1. The Company hereby withdraws from Commission consideration accounting Adjustments #22 (Normalization of Storm Costs); #28 (Credit Card Fees); #25 (Rate Case Expenses); #15 (End-of-Life Nuclear Reserve); #39 (Nuclear Materials and Supplies); and #21 (Adjustment to Non-Labor O&M).

2. Regarding Adjustment #22 (Normalization of Storm Costs), the Parties agree to use a 5-year average (removing the highest (2016) and lowest (2013) year) without any inflation adjustment. The Company will examine the feasibility and customer benefits of a storm damage reserve fund and shall provide a proposal for ORS to evaluate before the Company's next rate case. Adjustment #22 is updated to reflect adjust O&M expense by $1,018,000 and income tax ($254,000)

3. Regarding Adjustment #28 (Credit Card Fees), the Parties agree to use the 2018 actual transactions 449,456 times the $1.50 fee for a total of $674,184. Accordingly, the Parties agree that Adjustment #28 shall reflect adjustment to O&M expense by 674,000) and income tax ($168,000) to reflect actual expenses for year end.

4. The Parties agree to the calculation of rate case expenses reflected in ORS Adjustment # 25 (actual rate case expenses received and verified by ORS through December 31, 2018). The Company will continue to defer rate case expenses incurred after December 31, 2018 and will continue to send invoices to ORS for an audit for confidence in the transactions given the

issues raised in this case. For invoice documentation, the Company will either submit paper invoices or the information requested below for electronic invoices consistent with the following:

a) Electronic invoice detail ~~in the format attached (Exhibit 1)~~

b) Confirmation of payment for the electronic invoice.

c) Affidavits from the vendor/counsel verifying that the amounts are related to this DEP rate case and are true and accurate.

d) ORS retains the right to spot check or sample rate case expenses, and request paper invoices or other supporting detail and Duke agrees it will obtain and provide from the vendor/counsel unless not available.

ORS reserves its right to challenge the inclusion of the unamortized rate case expense in rate base in the current and any future rate case proceeding.

5. The Parties agree that the Company may establish an end-of-life nuclear reserve fund as proposed in Adjustment #15. The Company shall adjust depreciation and amortization by $2,938,000, income taxes by ($733,000), working capital by ($2,938,000), and accumulated deferred taxes by $733,000 to adjust the reserve for end-of-life nuclear costs.

6. In compromise and settlement of Adjustment #15, the Parties agree to ORS Adjustment #39. Accordingly, the Parties agree to adjust nuclear materials and supplies inventory by ($599,000) to remove nuclear materials and supplies inventory at the Harris Nuclear Station that have remained in a hold status for a period greater than four years.

7. In compromise and settlement of Adjustment #15, the Parties agree to ORS Adjustment #21 to remove the inflation adjustment to non-labor O&M.

8. The Parties agree that the decision in this docket does not set precedent for rate recovery of new deferrals in future proceedings using criteria established in an upcoming generic docket or any other criteria the Commission determines appropriate.

9. This Stipulation shall be effective upon execution of the Parties and shall be interpreted according to South Carolina law and only applies to the matters in this docket.

10. The Parties represent that the terms of this Stipulation are based upon full and accurate information known as of the date this Stipulation is executed. If, after execution, either Party is made aware of information that conflicts, nullifies, or is otherwise materially different than that information upon which this Stipulation is based, either Party may withdraw from the Stipulation with written notice to the other Party.

11. This Stipulation shall bind and inure to the benefit of each of the signatories hereto and their representatives, predecessors, successors, assigns, agents, shareholders, officers, directors (in their individual and representative capacities), subsidiaries, affiliates, parent corporations, joint ventures, heirs, executors, administrators, trustees, and attorneys.

12. Each party acknowledges its consent and agreement to this Stipulation by authorizing its counsel to affix his or her signature to this document where indicated below. Counsel's signature represents his or her representation that his or her client has authorized the execution of this Stipulation. Facsimile signatures and e-mail signatures shall be recognized as effective as original signatures to bind any party. This document may be signed in counterparts, with the various signature pages combined with the body of the document constituting an original and provable copy of this Stipulation.

13. The parties agree that signing this Stipulation will not constitute a precedent or evidence of acceptable practice for the matters described herein in future proceedings.

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Action Item 9

PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA
COMMISSION DIRECTIVE

ADMINISTRATIVE MATTER	☐	DATE	**July 31, 2019**
MOTOR CARRIER MATTER	☐	DOCKET NO.	**2018-318-E**
UTILITIES MATTER	☑	ORDER NO.	**2019-545**

THIS DIRECTIVE SHALL SERVE AS THE COMMISSION'S ORDER ON THIS ISSUE.

SUBJECT:

DOCKET NO. 2018-318-E - Application of Duke Energy Progress, LLC for Adjustments in Electric Rate Schedules and Tariffs - Staff Presents for Commission Consideration the Office of Regulatory Staff's Request for Clarification Regarding CertainTEED Litigation Costs.

COMMISSION ACTION:

On June 27, 2019, the Office of Regulatory Staff filed a letter seeking clarification about the Commission's ruling upon Reconsideration or Rehearing of Order No. 2019-341. Specifically, there is a question as to whether the Commission intended to allow recovery of the On-Going Payment Obligation as provided for in Adjustment #38. I will provide clarification on this point at this time. The Commission ruled that, "The CertainTEED litigation cost adjustment of $830,000 should be recoverable." This is the result of what is, in my view, the result of a reasonable and prudent strategic decision that led to approximately $50 Million of ratepayer benefit. The costs to satisfy obligations under this arrangement are reasonably recovered.

PRESIDING: Randall SESSION: Regular TIME: 2:00 p.m.

	MOTION	YES	NO	OTHER	
BELSER	☐	☑	☐		
ERVIN	☐	☑	☐		
HAMILTON	☐	☐	☐	Absent	Sick Leave
HOWARD	☐	☑	☐		
RANDALL	☐	☑	☐		
WHITFIELD	☑	☑	☐		
WILLIAMS	☐	☑	☐		

(SEAL)

RECORDED BY: J. Schmieding

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2018-318-E - ORDER NO. 2019-454

OCTOBER 18, 2019

IN RE:	Application of Duke Energy Progress, LLC for Adjustments in Electric Rate Schedules and Tariffs and Request for an Accounting Order	) ORDER GRANTING IN) PART AND DENYING IN) PART MOTIONS FOR) REHEARING AND) RECONSIDERATION

This matter comes before the Public Service Commission of South Carolina ("Commission" or "PSC") upon the timely Petitions for Rehearing or Reconsideration filed pursuant to S.C. Code Ann. Sections 1-23-380 and 58-27-2150 and S.C. Code Ann. Regs. 103-825 (A)(4). Petitions to rehear or reconsider Commission Order No. 2019-341 ("Order") were filed by the South Carolina Energy Users Committee ("SCEUC"), the South Carolina Office of Regulatory Staff ("ORS"), and Duke Energy Progress, LLC ("Company," "DEP," or "Duke Energy"). The Commission finds that no rehearing of the evidence is necessary in this instance, but that, based upon a full review of the written arguments presented by the parties, in conjunction with a review of the record in this case, certain modifications to and clarifications of Order No. 2019-341 are warranted. This order sets out the Commission's changes to Order No. 2019-341, and to the extent that any rulings within this order conflict with Order No. 2019-341, this order supersedes the prior order. Any matters not specifically addressed in this order remain unchanged. Our holdings herein and the holdings contained in Order No. 2019-341 which remain unchanged are all supported by the entire record of this case.

We address each of the petitions below.

Petition of the South Carolina Energy Users Committee

The two points raised by SCEUC's petition may be summarized as asking for differing treatment of the recovery for the coal ash remediation costs at the H.B. Robinson coal plant and of the Real Time Pricing Tariff offered by the Company. Commission Order No. 2019-341 awarded recovery of coal ash remediation costs to the Company. These costs were incurred pursuant to a Consent Agreement entered by the Company and the South Carolina Department of Health and Environmental Control in September 2014. The Consent Agreement is valid, having been entered pursuant to SCDHEC's authority under the South Carolina Hazardous Waste Management Act, S.C. Code. Ann § 44-56-10, *et seq.*, the Pollution Control Act, S.C. Code Ann. § 48-1-10 *et seq.*, and the South Carolina Solid Waste Policy and Management Act, S.C. Code Ann. §44-96-10, *et seq*. The Commission found then, and continues now, to consider such costs reasonable and prudently incurred, and subject to recovery. This issue is discussed further in Order No. 2019-341 at pages 45-46.

Next, SCEUC has requested that the Commission require the Company to implement market-based real-time pricing. The real-time pricing ("RTP") tariff is a voluntary rate option that offers large customers the opportunity to purchase incremental energy at a rate calculated based upon the Company's marginal cost of the generator that is expected to serve the next kWh of system load based upon all available generating plants. It is not intended to be a proxy for wholesale market-based pricing, or to be a mechanism for the Company to shop the wholesale market for low cost electricity on behalf of RTP customers and allow them to choose between the current wholesale market price and a rate based upon the

Company's marginal cost to generate an additional kWh. (Tr. p. 709-21 – 709-23.) See Wheeler Rebuttal at pages 21-23. For these reasons, the Commission declines to require the Company to alter or amend its RTP tariff program at this time.

Petition of the Office of Regulatory Staff

The ORS made several requests for clarification from Order No. 2019-341. The issues were not necessarily contested matters, but rather, ORS sought specific enumeration of values for certain elements of the Company's Application. Those clarifications are as follows:

1. We clarify that the rate base is $1,477,356,000, and the net income for return is $103,271,000.

2. We clarify that the Company, for purposes of this rate case, is to use the Cost of Service Study presented by the Company to allocate all revenues, expenses, and rate base items and to design rates for all customer classes, unless otherwise specified by the Commission.

3. We clarify that the Commission intended to order a 75% disallowance of the $351,000 of Lynn Good's executive compensation allocated to South Carolina ratepayers – a net allowance of $88,000, rounded, with all attendant adjustments as recommended by the ORS in its petition.

4. We clarify that the Commission disallows the $178,000 of non-allowable expenses remaining in dispute.

5. We correct a clerical error. The Company's accounting Order No. 2018-553, not Order No. 2018-552 should be, and is, declared null and void.

6. We clarify that the AMI deferral continuation sought by the Company is granted, subject to the deferral treatment outlined in section IV.K of the Order.

7. We clarify and amend section IV.L of the Order to include Adjustment #18. The remainder of the coal ash deferral not addressed in section IV.B of the Order, including the non-Asset Retirement Obligation amount, should be afforded the same treatment as ordered in section IV.K of the Order.

8. We clarify that the Commission explicitly approves the Grid Modernization Deferral, as stipulated between the ORS and the Company.

9. ORS has also challenged the sufficiency of the notice given to customers of the proposed rate increase, arguing that the dramatic decrease in Base Facility Charge ("BFC") rates and the resulting increase in volumetric rates requested after the issuance of the initial notice to customers of the proposed new rates made the initial notice inadequate to afford them the opportunity to determine how they would be affected and whether they should intervene or otherwise oppose the new rates. ORS requested that the Commission require the Company to issue new notices and hold rehearing limited to the issue of the effect of the BFC on volumetric rates, and it stated that a hearing would not be necessary if no customer requested one.

We find that the notice of the Company's proposed rate increase conforms with the requirements of due process, and we therefore reject ORS's request that we require the issuance of a new notice and hold a limited rehearing. The South Carolina Supreme Court has held that substantial prejudice must be shown to establish a due process claim. *Tall Tower, Inc. v. S.C. Procurement Panel*, 294 S.C. 225, 233, 363 S.E.2d 683, 687 (1987). The

Court has also made it clear that due process is flexible and calls for such procedural protections as the situation requires. *Kurschner v. City of Camden Planning Dep't*, 376 S.C. 165, 172, 656 S.E.2d 346, 350 (2008). The ORS has not demonstrated such prejudice here. Put most simply, due process in this case does not require that the proposed rates stated in the Company's initial application foreclose adjustment of component elements of its proposed charges in response to customer concerns. In this case, all the stakeholders had adequate notice of the additional revenue the Company was requesting, since the revenue request contained in the initial notice exceeded the actual revenue awarded.

In this docket, eleven parties intervened, including influential advocacy groups like the S.C. State Conference of the National Association for the Advancement of Colored People ("NAACP"), Upstate Forever, the Sierra Club, and the South Carolina Coastal Conservation League. Many of these groups participated in this proceeding in a representative capacity, advocating for customers. These groups brought substantial expertise to the proceeding and offered expert testimony on the issue of the proposed BFC. These experts clearly and unmistakably understood the inverse relationship between the reduction in the BFC they were advocating and an increase in the volumetric component of the Company's proposed rates. It is significant that none of these parties has joined the ORS in its concern about the purported problem with the notice provided in the proceeding. Additionally, hundreds of customers filed letters of protest with the Commission, and hundreds more attended the two public night hearings held in Sumter and Florence. We find that the level of participation in the case by both the intervenors and by individual customers demonstrates that the notice given of the requested rate increase was sufficient to meet the

standards for due process. We therefore affirm the finding of adequacy of notice in Commission Order No. 2019-341 at page 20

Petition of Duke Energy Progress, LLC

The Company's petition seeks rehearing or reconsideration on effectively five matters: coal ash remediation and disposal costs; treatment of deferrals; return on equity; coal ash litigation expenses; and CertainTEED litigation costs.

1. Coal Ash Remediation Costs

The Company asserts that the Commission's decision to disallow portions of the coal ash remediation costs – especially those costs incident to the passage of the North Carolina Coal Ash Management Act ("CAMA") – prejudices the Company's substantial right to recover its expenses of providing service to the public. This issue is fully discussed in Commission Order No. 2019-341 at pages 39-52.

The Commission's decision to disallow recovery of $333,480,308 in coal ash remediation and disposal costs ("Coal Ash Costs") is supported by the substantial evidence on the whole record and appropriate. The unpermitted discharge by Duke Energy of approximately 27 million gallons of coal ash wastewater and an estimated 39,000 tons of coal ash into the Dan River played a deciding role in the development of CAMA in its present form, not only accelerating the timing of action required, but also limiting the options to remediate and close coal combustion residuals impoundments more than would eventually occur under the Federal Coal Combustion Residuals ("CCR") Rule. (R. p. 1115-15, ll. 13-23). Information exposed in the Duke Energy federal plea deal revealed that on two separate occasions, Duke Energy engineers at the Dan River plant requested an

immaterial amount of budget funding to pay for video equipment to scope the pipe that later failed. (R. p. 1004-34, 11. 11-14). Duke Energy engineers were denied their request. (R. p. 1004-34, ll. 14-15). In response to the Dan River spill, the North Carolina Legislature passed CAMA that required the closure of existing coal ash ponds as well as conversion from wet ash to dry ash handling. (R. p. 1004-34, 11. 17-20).

ORS witness Witliff testified that Duke Energy Carolinas, LLC ("DEC") and DEP were criminally and civilly negligent in their operations and maintenance of the impoundments for years prior to the enactment of CAMA, confirming that DEC and DEP failed to responsibly address and correct these issues adequately -- and consequently in a much less costly -- manner than it is currently being required to do. (R. p. 1115-16, ll. 16-22). DEC's State President for South Carolina, Kodwo Ghartey-Tagoe, acknowledged in his testimony that in 2015, the Company pled guilty to violations of the Clean Water Act and its regulations as part of the criminal investigation following the Dan River spill. (Tr., p. 378). Duke Energy management made specific decisions that resulted in the coal ash spill in North Carolina, that in turn, led to the creation of CAMA. (R. p, 1004-38, 11. 32-33). North Carolina's CAMA is significantly more restrictive and stringent than the federal CCR Rule. (R. p. 1115-21, 11. 21-22).

Additionally, witness Wittliff testified that North Carolina's CAMA rules resulted in additional expenses being incurred at DEP's Asheville and Sutton plants, due to a more accelerated closure schedule than the federal CCR rule would have otherwise required. (R. p. 1115- 23, 11. 4-120). Regarding costs incurred at the DEP plant H.F. Lee, witness Wittliff testified that DEP's beneficiation project at H.F. Lee falls under the "CAMA-only"

category, and the ratepayers of South Carolina should not have to reimburse the Company for expenses related to North Carolina's CAMA-only beneficiation requirement. (R. p. 1115-36, 11. 1-4). According to witness Wittliff, the federal CCR rule does not require beneficiation and as a result, no savings could accrue to customers as a result of beneficiation performed pursuant to North Carolina's CAMA. (R. p. 1212, 11. 5-10). Regarding costs incurred at the DEP plant Sutton, witness Wittliff testified that the federal CCR rule does not require the closure of Sutton and therefore he reasonably concluded that the closure of Sutton was directed by North Carolina's CAMA and the North Carolina court orders mentioned by DEP witness Kerin. (R. p. 1115-37, ll. 16-21).

Regarding costs incurred at the DEP plant Asheville, witness Wittliff testified that the extent of compliance measures undertaken by DEP to comply with North Carolina's CAMA and other North Carolina laws resulted in much greater costs than what the federal CCR rules would have required. (R. p. 1115- 40, 11. 7-19). Regarding costs incurred at the DEP plant Weatherspoon, witness Wittliff testified that DEP has represented its Weatherspoon efforts as beneficiation, which is not required under the CCR rule. (R. p. 1115-42, 11. 21-23).

DEP directly assigns certain costs to its North Carolina and South Carolina jurisdictions and often these costs are derived from laws and regulations specific to that jurisdiction. (R. p. 1099-6, ll. 10-16). Additionally, the Company has already excluded certain costs from this proceeding that were incurred due to North Carolina law including: recovery of certain costs that are associated with the provision of drinking water to North Carolina residents, the costs to comply with the North Carolina Clean Smokestacks Act,

North Carolina Renewable Portfolio Standards, and the North Carolina Competitive Energy Solutions for NC (HB.589) laws. (R. p. 1101-9, 11. 1- 5). Finally, the South Carolina General Assembly has not passed legislation that is similar to North Carolina's CAMA. (R. p. 1115-21, l. 8-9).

"The party challenging a PSC order must establish that (1) the PSC decision is not supported by substantial evidence and (2) the decision is clearly erroneous in light of the substantial evidence in the record." *Kiawah Prop. Owners Grp. v. Pub. Serv. Comm'n of S.C.*, 359 S.C. 105, 109, 597 S.E.2d 105, 109 (2004). "Because the Commission's findings are presumptively correct, the party challenging the Commission's order bears the burden of convincingly proving the decision is clearly erroneous, or arbitrary or capricious, or an abuse of discretion, in view of the substantial evidence of the record as a whole." *S.C. Energy Users Comm. v. S.C. Pub. Serv. Comm'n*, 388 S.C. 486, 491, 697 S.E.2d 587, 590 (2010). Although the burden of proof in showing the reasonableness of a utility's costs that underlie its request to adjust rates ultimately rests with the utility, the South Carolina Supreme Court has concluded that the utility is entitled to a presumption that its expenses are reasonable and were incurred in good faith. *Hamm v. S.C. Pub. Serv. Comm'n*, 309 S.C. 282, 422 S.E.2d 110 (1992) (internal citations omitted). However, that presumption is not dispositive; the burden remains on the utility to demonstrate the reasonableness of its costs, and the presumption in a utility's favor clearly does not foreclose scrutiny and a challenge. *Utils. Servs. of S.C., Inc. v. S.C. Office of Regulatory Staff*, 392 S.C. 96, 109, 708 S.E.2d 755, 762 (2011). "The ultimate burden of showing every reasonable effort to minimize [] costs remain on the utility." *See Hamm*, 309 S.C. at 286, 422 S.E.2d at 113. Additionally,

"[i]n rate cases, [the] Public Service Commission is recognized as the 'expert' designated by the legislature to make policy determinations regarding utility rates." *Hamm v. S.C. Pub. Serv. Comm'n*, 294 S.C. 320, 322, 364 S.E.2d 455, 456 (1988) (citing *Patton v. S.C. Pub. Serv. Comm'n*, 280 S.C. 288, 291, 312 S.E.2d 257, 259 (1984)).

In this instance, other parties presented evidence that overcame the initial presumption of reasonableness to which the Company was entitled and that it failed to make every reasonable effort to minimize costs. Multiple witnesses testified that Duke's actions led to the release of coal ash into the Dan River and the subsequent enactment of CAMA. Parties presented evidence that CAMA was enacted by the North Carolina General Assembly as a direct result of the Company's action and that costs increased as a result of CAMA. Additionally, evidence was presented to the Commission that it would be unreasonable for South Carolina customers to bear these increased costs, which result from a North Carolina law and Duke's discharge of approximately 27 million gallons of coal ash wastewater and an estimated 39,000 tons of coal ash into the Dan River. According to witness Wittliff, ORS has taken the position that North Carolina laws, over which DEP's South Carolina customers have no meaningful input, should not place an additional economic burden on the ratepayers of South Carolina. (R. p. 1115-31, 11. 2-6).

Any presumption to which the Company was entitled is not dispositive. The Company's assertion that the Commission lacked a legal basis for denying its recovery of the Coal Ash Disposal costs is incorrect. The record is replete with evidence which supports the Commission's decision that recovery of the North Carolina Coal Ash Disposal costs from South Carolina ratepayers would be unreasonable. The Commission properly relied upon

substantial evidence on the whole record, which overcame the initial presumption of reasonableness, in determining it would be unreasonable for South Carolina customers to bear these Coal Ash Disposal costs.

The Company alleges that the Commission's Order results in an unconstitutional taking. The Fifth Amendment to the United States Constitution provides that private property shall not be taken for public use without just compensation. However, no such taking occurred here, because the Company had no property right to recovery of coal ash disposal costs. The Commission is empowered by the General Assembly to set rates, and its determination of which expenses are recoverable is a component of its ratemaking authority. Duke has cited no legal authority restricting the discretion of the Commission in determining the recoverability of the coal ash disposal expenses at issue. Because the Commission has this discretion, Duke Energy has no protected property interest in recovery of the expenses. In determining whether a protected property interest exists in the context of utility ratemaking, the focus must be on the degree of discretion given to the decisionmaker, not on the probability of the decision's outcome. *S.C. Elec. & Gas Co. v. Randall*, 333 F.Supp.3d 552, 571 (D.S.C. 2018).

The Company has also asserted that the Commission's Order violates the Commerce Clause of the United States Constitution. This is the first time the Company has raised this argument. In discussing Petitions for Reconsideration or Rehearing filed before it, the South Carolina Supreme Court stated, "[t]he purposes of a petition for rehearing is not to have presented points which lawyers for the losing parties have overlooked or misapprehended, and the purpose of a petition for rehearing is not just to have the case tried in this court a

second time." *Arnold v. Carolina Power & Light Co.*, 168 S.C. 163, 167 S.E. 234, 238 (1933). While *Arnold* relates specifically to a Petition for Rehearing filed at the South Carolina Supreme Court, the guiding principal remains. *See Kiawah Prop. Owners Grp. v. Pub. Serv. Comm'n of S.C.*, 359 S.C. 105, 113, 597 S.E.2d 145, 149 (2004) (holding that an issue the utility "first broached... in its petition for rehearing to the PSC" was "not preserved."); *see* also *Patterson v. Reid*, 318 S.C. 183, 456 S.E.2d 436 (Ct.App.1995) (a party may not raise an issue in a motion to reconsider, alter or amend a judgment that could have been presented prior to the judgment); *McGee v. Bruce Hosp. Sys.*, 321 S.C. 340, 468 S.E.2d 633 (1996) (a party may not raise an issue for the first time in a motion for a new trial). Additionally, the Commission has previously determined that a party may not raise an issue in a petition for rehearing that could have been presented prior to judgment. The Commission's Order does not engage in economic discrimination or burden the flow of interstate commerce. South Carolina's Commission does not dictate the actions of the Company, the North Carolina Legislature, or other Commissions and has not engaged in economic discrimination or burdened the flow of interstate commerce.

The Company has also asserted that the Commission's Order violates the doctrine of equitable estoppel. There is ample evidence in the record that the North Carolina Coal Ash Costs at issue were unreasonable and should not be forced upon the Company's South Carolina ratepayers and the Commission did not violate the doctrine of equitable estoppel. Generally, "'estoppel does not lie against the government to prevent the due exercise of its police power or to thwart the application of public policy.'" *Quail Hill, LLC v. Cty. of Richland*, 387 S.C. 223, 236, 692 S.E.2d 499, 506 (2010) (quoting *Greenville Cty. v.*

Kenwood Enters. Inc., 353 S.C. 157, 171, 577 S.E.2d 428, 435 (2003)). Estoppel runs against the government only in certain limited situations. In these situations, the party claiming estoppel against the government "must prove: (1) lack of knowledge and of the means of knowledge of the truth as to the facts in question, (2) justifiable reliance upon the government's conduct, and (3) a prejudicial change in position." *Id.* at 236-37, 692 S.E.2d at 506. "In its broadest sense, equitable estoppel is a means of preventing a party from asserting a legal claim or defense that is contrary or inconsistent with his or her prior action or conduct." 28 Am. Jur. 2d Estoppel and Waiver 5 27 (2011). "The essence of equitable estoppel is that the party entitled to invoke the principle was misled to his injury." *S.C. Pub. Serv. Auth. v. Ocean Forest Inc.*, 275 S.C. 552, 554, 273 S.E.2d 773, 774 (1981). "The party asserting estoppel bears the burden of establishing all its elements." *Morgan v. S.C. Budget & Control Bd.*, 377 S.C. 313, 320, 659 S.E.2d 263, 267 (Ct. App. 2008) (quoting *Estes v. Roper Temp. Servs.*, 304 S.C. 120, 122, 403 S.E.2d 157, 158 (Ct. App. 1991)). "Absent even one element, estoppel will not lie against a government entity." *Id.* at 320, 659 S.E.2d at 267.

In this case, the Company cannot show that the Commission's disallowance of the coal ash disposal costs at issue meets any of the above-enumerated elements of estoppel. The Company itself removed certain costs attributable to CAMA and other North Carolina laws. The Company cannot now claim justifiable reliance that this Commission would allow recovery of the coal ash disposal costs. Additionally, the Commission has, in prior cases, removed from recovery costs incurred due to other states' laws that are over and above what South Carolina law requires. The Company also incorrectly claims that the Commission made factual errors. According to the South Carolina Supreme Court, "[t]he Commission

sits as the trier of facts, akin to a jury of experts." *Hamm*, 309 at 287, 422 S.E.2d at 113. While parties may present varying viewpoints, it is the Commission that tries the facts and bases its conclusion thereon. The Company lists errors that it alleges were made by ORS witness Witliff; however, it fails to connect many of these errors to the record or the Commission's analysis contained in the Order. In fact, many of the allegations cannot be substantiated by the record and are being raised for the first time in the Company's Petition for Reconsideration. The Commission is the trier of fact, and it properly weighed all evidence put before it by the parties and made a well-reasoned conclusion.

Finally, the Company alleges that the Commission's Order fails to make findings of fact or conclusions of law. This claim is without merit, as evidenced by the findings of fact and conclusions of law on pages 104-105 of the Order, which are supported by the facts and analysis presented on pages 39-52 of the Order. When making specific, express findings of fact, no particular format is required. See, *Airco Inc. v. Hollington*, 269 S.C. 152, 160, 236 S.E.2d 804, 808 (1977)). While it is true, "a recital of conflicting testimony followed by a general conclusion is patently insufficient to enable a reviewing court to address the issues," that is not what the Commission has done here. *Able Commc'ns Inc. v. S.C. Pub. Serv. Comm'n*, 290 S.C. 409, 411, 351 S.E.2d 151, 152 (1986).

The Commission clearly laid out and considered the evidence presented by the parties and, beginning on page 48 of its Order, detailed its analysis in reaching the conclusion that it would be unreasonable for the Company's South Carolina customers to bear the burden of these North Carolina Coal Ash Expenses. These costs directly stem from Duke Energy's negligence, would impose great costs upon South Carolina customers as a result of a law

they had no voice in, and allowing one jurisdiction's laws to impose these costs on another's ratepayers would be a departure from past Commission rulings and practice. As a result, the Commission's Order is not arbitrary or capricious, contains all required analysis and rests upon the substantial evidence in the whole record.

2. Treatment of Deferrals

The Company asserts that the Commission erred in denying a return during the deferral and/or amortization period for the expenses addressed in the following adjustments: GridSouth, Fukushima/Cyber Security (Adjustment #17), Environmental Costs (Adjustment #18), Advanced Metering Infrastructure (Adjustment #19), Customer Connect (Adjustment #30), and Grid Improvement Costs (Adjustment #35).

While the Commission previously approved the Company's requests for accounting orders to defer the expenses detailed in the Application, the Commission orders provide no guarantee to the Company for cost recovery, including a return on those expenses. ORS witness Payne testified that, per the National Association of Regulatory Utility Commissioners ("NARUC") Rate Case and Audit Manual, a company may recover prudently incurred operating expenses, without a weighted average cost of capital ("WACC") or rate base treatment.

The ORS position, which was adopted by this Commission, is that deferrals related to O&M expenses are not to earn a return, while those deferrals related to capital costs are to earn a return. Treatment of deferrals is ultimately a matter of the Commission's discretion. The Commission has a duty to balance the needs of the public and the utility such that the public is served without the utility being disserved. This approach represents exactly such a

balance, and we decline to rehear or reconsider our ruling on the deferral treatments. This issue is more fully discussed in Commission Order No. 2019-341 at pages 95-98.

3. Return on Equity

DEP also seeks reconsideration of the Commission's ruling adopting 9.5 percent as the appropriate Return on Equity ("ROE"). The Company complains that this Commission accepted Company witness Hevert's ROE testimony as reliable in the SCE&G Consolidated Cases[1], and that having done so, it cannot now find his testimony to be unreliable here. We reject this argument.

The standards governing the Commission's determination of the appropriate ROE are not in dispute. South Carolina law requires that the Commission's determination of a fair rate of return must be documented fully in its findings of fact and based exclusively on reliable, probative, and substantial evidence on the whole record. Moreover, a utility's ROE should be commensurate with returns on investments in other enterprises having corresponding risks, and must be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties.

DEP is not asking this Commission to base its decision on evidence produced in the record of this case, but to base its decision on evidence that was produced in an entirely different docket and related to an entirely different utility, largely based upon the fact that

[1] Specifically, Docket No. 2018-370-E, the SCE&G proceeding incident to the abandonment of the nuclear projects V.C. Summer Units 2 and 3, and the merger with Dominion Energy.

the two utilities presented the same expert witness, who proposed the same ROE for both, in spite of the dissimilarity of the two companies. This request is contrary to South Carolina law. DEP presented no evidence in this case to suggest that DEP and SCE&G were comparable in terms of risk such that they should be awarded the same ROE, nor could it. Indeed, DEP's own evidence suggested that its corporate parent had strong credit ratings and was financially sound, which contrasts markedly with the evidence produced in the SCE&G Consolidated Cases showing that SCE&G was at risk of bankruptcy. Moreover, the ultimate ROE awarded in the SCE&G Consolidated Cases was the result of a settlement, while this case was fully litigated. Because SCE&G and DEP did not have corresponding risks, it is logical that they would be awarded different ROEs.

Three (3) parties' witnesses pre-filed testimony that specifically addressed the issue of ROE. Robert Hevert testified on behalf of DEP, David Parcell for ORS, and Steven Chriss on behalf of Walmart. Mr. Hevert recommended a ROE for DEP of 10.75% within a range of 10.25% to 11.25%. In the Company's Application, DEP requested that the Commission approve a ROE of 10.5%. *See, Application of Duke Energy Progress, LLC*, Para. 24 (Nov. 8, 2018). This recommended range is clearly extraordinarily high and exceeds the afore-cited averages by approximately 100 basis points. The differential between the averages and Mr. Hevert's recommended ROE clearly supports the Commission giving greater weight to the testimonies of witnesses Parcell and Chriss.

Witness Parcell testified that DEP's ratings were generally higher than most electric utilities in the United States and that its ratings are indicative of relatively lower risk. (R. p, 801-18, ll. 6-10). DEP witness Sullivan testified that rating agencies believe that DEP

operates in a constructive regulatory environment that supports long-term credit quality and view the Company's position within the Duke Energy corporate family as credit supportive. (Direct, p. 10, ll. 6-9). DEP's witness Hevert acknowledged in testimony that he has seen no instances where a company has sought an increase in its ROE as DEP here and was granted its request in the last three to five years. (R. p. 812, ll. 19-25, p. 813, 11. 1-2). In support of its reliance on his recommendation, the Commission provided in its Order that ORS witness Parcell has provided testimony as a ROE and Cost of Capital expert witness on several occasions before this Commission since the early 1980s (R. p. 801-2, 11. 4-6) and has testified in over 570 utility proceedings in approximately 50 regulatory agencies across the United States and Canada. (R. p. 801-1, 11. 21-22, p. 801-2, l. 1). The record thus establishes that Mr. Parcell has extensive experience in calculating ROE and Cost of Capital recommendations and that the Commission was justified in placing its reliance on his expert opinion in determining an appropriate ROE. The Commission additionally fully detailed in the Order the methodologies and procedures used by Mr. Parcell in reaching his recommendation.

The substantial evidence in the record supports the Commission's decision relying on Mr. Parcell. The Order recounts that the Direct and Surrebuttal Testimonies of Mr. Parcell employed three (3) recognized methodologies to estimate DEP's Cost of Equity: the DCF, CAPM, and Comparable Earnings (CE) models. He applied each of these methodologies to two (2) proxy groups -- his own and the one developed by DEP witness Hevert -- to establish a range of 9.1% to 9.5%, with a 9.3% mid-point. (R. p. 801-3, 11. 14-16; p. 801-4, 11. 3-5). Mr. Parcell established this range based on the results of his DCF (range of 9.0% to 9.2%

with a 9.1% midpoint) and CE (range of 9.0% to 10.0% with a 9.5% midpoint) models. (R. p. 801-4, l. I). As a result of these analyses, Mr. Parcell recommended a Cost of Capital in the range of 6.73 to 6.94 %, with a midpoint of 6.84 %. (R. p. 801-4, 11. 8-9). In reaching his recommendation of a 9.3% ROE, Mr. Parcell in large part relied on the DCF model, which is an analysis of current market conditions. The DCF model relies on current stock prices in the marketplace and has traditionally been regarded by this Commission as the best indicator of the return investors require in the marketplace for investment-grade regulated utility companies. Mr. Parcell relied on the results of both his DCF and CE analyses to determine his ROE recommendation and did not include the results of his CAPM analysis, as he found that the resulting range (i.e., 6.3% to 6.6%) was too low to be practical (R. p. 801-45, 11. 18-21). Mr. Parcell thus further established the reasonableness of his recommended ROE. By excluding his CAPM analysis, Mr. Parcell evidenced an effort to produce a fair and reasonable recommendation to the Commission. Conversely, DEP witness Hevert recommended that both of his DCF analyses be given little weight by the Commission, apparently in large part due to them yielding results which he believed to be too low, and thus disadvantageous to the Company (R. p. 948-8, 11. 1-3).

The Commission also relied on Mr. Parcell's testimony which demonstrated that Mr. Hevert's analyses showed a consistent pattern of choosing data and methodologies that result in the highest possible Cost of Equity conclusions. As the Commission correctly pointed out in questioning the testimony of Mr. Hevert, the data used by Mr. Hevert was filtered to produce an inflated ROE recommendation to the benefit of the Company. The Commission additionally accepted Mr. Parcell's assertion that Mr. Hevert's use of several "factors" to

create an impression of more risk for DEP are already considered by the rating agencies and essentially resulted in Mr. Hevert "double-counting" risk in order to artificially inflate his ROE recommendation (R. p. 801-57, 11. 1-21, p. 801-58, 11. 1-2). The Commission thus provided significant justification for itsrefusal to accept Mr. Hevert's recommendation in this case.

Mr. Parcell's ROE recommendation was further supported by his testimony evidencing ROEs authorized by other regulatory bodies across the country. The Commission relied on evidence presented by Mr. Parcell that, from 2017 to 2018, ROEs allowed by regulatory jurisdictions across the United States for all electric utilities averaged 9.59% with a median ROE of 9.58% (Exhibit DCP-2, Schedule 3). This national average is only 9 basis points higher than that awarded by the Commission, but it is 116 basis points lower than Mr. Hevert's recommended 10.75% ROE.

Testimony and evidence submitted to the Commission in this proceeding, primarily through Mr. Chriss and Mr. Parcell, confirms a decline in ROEs across the country in recent years, supports the strength of market conditions, and indicates an anticipated upward trend in interest rates in the near term. These factors, along with the financial stability of DEP, strongly support the slight reduction in the national average ROE awarded by the Commission in this case. The Commission has substantial support in the record to support its discounting Mr. Hevert's ROE recommendation as biased in the Company's favor. Both Mr. Parcell's factual testimony regarding a 9.58% national average and the Commission's legitimate rejection of Mr. Hevert's biased recommendation establish that there was

substantial evidence in the record to support the Commission's assignment of a 9.5% ROE. Accordingly, we reject DEP's request for reconsideration of our ruling on this issue.

4. Coal Ash Litigation Expenses

The Company argues that it is entitled to a presumption of reasonableness of its expenditures, including litigation expenses. As a first step in the analysis and determination of cost recovery, the Company would be correct – however, that is not the end of the analysis.

> Utility is correct that it was entitled to a presumption that its expenditures were reasonable and incurred in good faith, and therefore, a showing that its expenses had increased since its last rate case could satisfy its burden of proof. Nevertheless, the presumption in a utility's favor clearly does not foreclose scrutiny and a challenge. In those circumstances, the burden remains on the utility to demonstrate the reasonableness of its costs.

Utils. Servs. of S.C., 392 S.C. at 109-10, 708 S.E.2d at 762-63 (citing *Hamm v. S.C. Pub. Serv. Comm'n*, 309 S.C. 282, 286-287, 422 S.E.2d 110, 112-113 (1992)).

Here, based on the substantial evidence on the whole record, the Commission properly excluded from recovery the expenses incurred in the coal ash litigation. This Commission cannot presume that the expenses a utility seeks to recover in its rates and charges are legitimate if they cannot be subjected to the scrutiny of an audit or examination. Every rate received by an electric utility must be just and reasonable. S.C. Code Ann. §58-27-810 (2015). Here, the Commission concluded that it would be unreasonable to pass these coal ash litigation expenses on to the Company's customers absent more detailed information by way of which the Commission could determine with more certainty whether recovery of these expenses from the ratepayers would be just and reasonable. Accordingly, the Commission correctly found that the Company had failed to carry its burden.

5. CertainTEED Costs Incident to Litigation

The Company argues that it is entitled to recovery of an On-Going Payment Obligation incident to litigation from the CertainTEED litigation. The CertainTEED litigation came about due to a contract dispute resulting from an contractually mandated provision of gypsum products to CertainTEED that had become uneconomic. In 2012, DEP's predecessor, Progress Energy, had agreed to sell and deliver to CertainTEED and CertainTEED agreed to purchase from Progress Energy at least 50,000 tons of Gypsum Filter Cake per month through 2029. The gypsum is a by-product of the Company's coal-fired generation in that it is produced by environmental control equipment (scrubbers) at some of the Company's coal-fired power plants. The Company had two choices with what to do with the gypsum by-product: dispose of it at a cost to customers (such as placing it in a landfill) or sell it to companies like CertainTEED, who can use the gypsum for products that they produce and then give customers the proceeds that the Company receives for those sales. The byproducts would be sold, creating an additional revenue stream for the Company and reducing the handling and disposal of waste product in landfills. These types of contracts were standard when coal was being burned in large quantities to generate power. However, as time passed, the CertainTEED contract, due to the reduction in coal being burned for power, became very expensive to comply with, and DEP attempted to reduce its minimum monthly quantity of gypsum pursuant to the contract. (Hrg. Ex. 68, p. 25). CertainTEED subsequently pursued legal action against DEP due to DEP's failure to comply with the Agreement to provide a minimum amount of gypsum. The Company subsequently settled the amount in dispute for specified damages, rather than continue performance under the

contract for a much greater financial detriment to the Company – and ultimately – the ratepayers. (R. pp. 915-17). The net benefit under the CertainTEED contract to consumers was approximately $50 Million, derived by calculating: 1) approximately $12 million in customer costs avoided for stockpile management, 2) $116 million in landfill cost avoidance savings to customers, 3) $17 million in direct revenue benefit to customers, and 4) a net subtraction of approximately $92 million from liquidated damages under the contract and associated legal fees. (R. pp. 921-25). The resulting more than $50 million in savings to customers demonstrates to us that the decision to enter into litigation and settlement with CertainTEED was strategic, reasonable, and prudent. Therefore, the costs incident to the CertainTEED litigation, an adjustment of approximately $830,000, are recoverable.

Conclusion

IT IS THEREFORE ORDERED:

1. The Commission declines to rehear or reconsider the two issues raised in the SCEUC Petition.

2. Clarification is provided for eight (8) matters raised by the Office of Regulatory Staff.

3. Satisfactory notice was issued to satisfy due process concerns regarding the proceeding in this docket.

4. Reconsideration or rehearing is denied in regard to coal ash remediation and disposal costs; treatment of deferrals; return on equity; and coal ash litigation expenses.

5. After reconsideration of the facts and circumstances, the Commission finds that the costs incident to the CertainTEED litigation were reasonable and prudently incurred, and therefore subject to recovery.

6. To the extent that this order and Order No. 2019-341 are in conflict, this order is the controlling ruling.

7. This Order shall remain in full force and effect until further order of the Commission.

BY ORDER OF THE COMMISSION:

Comer H. Randall, Chairman

Justin T. Williams, Vice Chairman

(SEAL)

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM THE PUBLIC SERVICE COMMISSION

Public Service Commission Docket No. 2018-318-E

Duke Energy Progress, LLC, Appellant-Respondent,

v.

Office of Regulatory Staff, Nucor Steel-South Carolina, Cypress Creek Renewables, LLC, SC Department of Consumer Affairs, Sierra Club, South Carolina Coastal Conservation League, South Carolina Energy Users Committee, South Carolina Solar Business Alliance, Incorporated, The South Carolina State Conference of the National Association for the Advancement of Colored People, Upstate Forever, Vote Solar, and Walmart, Inc.,

Respondents,

Of whom Office of Regulatory Staff is

Respondent-Appellant.

PROOF OF SERVICE

I certify that I have served the Respondent-Appellant Notice of Appeal on the following parties on this 20th day of November, 2019, by mailing a copy of the same via United States Mail, postage prepaid, to the following:

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